

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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Court of Appeals, District of Columbia

JANUARY TERM, 1902

No. 1159.

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NORA B. WERTZ, APPELLANT,

*vs.*

MELVIN A. WERTZ.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED DECEMBER 21, 1901.





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## INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Bill.....	1	1
Answer.....	8	5
Portions of answer expunged....	13	8
Decree dismissing bill.....	14	8
Appeal.....	15	8
Citation.....	16	9
Memorandum: Appeal bond filed. . . . .	17	9
Narrative of testimony on behalf of complainant.....	18	9
Testimony of H. Blankenhorn.....	18	9
Testimony of Mary E. Beckley.....	23	11
Testimony of Lizzie Parker.....	26	13
Cross-examination.....	27	13
Testimony of Lula S. Fluckey.....	27	14
Testimony of Zenobia Richardson.....	28	14
Cross-examination.....	32	17
Testimony of Charles A. Wolfe.....	32	17
Cross-examination.....	35	19
Testimony of W. Karl Beckley.....	39	21
Cross-examination.....	40	22
Testimony of N. J. Martin.....	42	23
Cross-examination.....	44	24
Testimony of Nellie Jordan.....	44	24
Cross-examination.....	45	25
Testimony of Thomas M. Riffel..	46	25
Testimony on behalf of defendant.....	47	26
Testimony of Grace Muirhead.....	47	26

	Original.	Print
Testimony of Abbie B. Mickle.....	48	26
Cross-examination ...	48	26
Testimony of Kate Lothrop ....	48	27
Cross-examination .....	49	27
Testimony of J. S. Jordan.....	49	27
Cross-examination .....	49	27
Testimony of Zua M. Unger.....	50	28
Testimony of Ida J. Fryer.....	51	28
Cross-examination .....	51	28
Testimony of John W. Palmer. ....	51	28
Testimony of W. Porter Cox.....	51	29
Cross-examination .....	53	30
Testimony of Frank E. Elder.....	54	30
Cross-examination .....	54	30
Testimony of Josephine Stuchell.....	56	31
Testimony of Ida J. Fryer (recalled).....	56	31
Cross examination . ....	56	31
Testimony of Owen P. Kellar.....	56	32
Cross-examination .....	57	32
Testimony of Ebenezer Ellis .....	57	32
Cross-examination .....	57	32
Testimony of John C. Athey. ....	58	32
Cross-examination .....	58	33
Testimony of W. F. Basim.....	59	33
Cross-examination .....	59	33
Testimony of Emma J. Wright.....	61	34
Cross-examination .....	63	36
Redirect examination.....	72	41
Recross-examination .....	72	41
Testimony in rebuttal .....	74	42
Testimony of Louisa Graham.....	74	42
Cross-examination .....	74	43
Testimony of Thomas H. Martin.....	75	43
Cross-examination .....	76	44
Testimony of Charles E. Swigart.....	77	44
Cross-examination .....	77	45
Testimony of Walter P. Plumley.....	78	45
Cross-examination .....	80	46
Testimony of Nellie Jordan.....	81	46
Cross-examination .....	81	47
Testimony of Zenobia Richardson..	82	47
Cross examination .....	90	53
Redirect examination.....	91	53
Testimony of Charles A. Wolfe .....	92	53
Cross-examination .....	98	58
Redirect examination.....	99	58
Directions to clerk for preparation of transcript .....	102	60
Clerk's certificate.....	103	60
Appellant's designation of parts of record to be omitted in printing.	104	61
Appellee's designation of additional parts of record to be printed..	105	61

# In the Court of Appeals of the District of Columbia.

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NORA B. WERTZ, Appellant, }  
vs. } No. 1159.  
MELVIN A. WERTZ. }

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*a* Supreme Court of the District of Columbia.

NORA B. WERTZ, Complainant, }  
vs. } No. 21745. In Equity.  
MELVIN A. WERTZ, Defendant. }

UNITED STATES OF AMERICA, }  
District of Columbia, } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Divorce.*

Filed September 26, 1900.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

NORA B. WERTZ, Complainant, }  
vs. } Equity. No. 21745.  
MELVIN A. WERTZ, Defendant. }

To the supreme court of the District of Columbia:

The petition of Nora B. Wertz for divorce respectfully shows to the court:

First. The petitioner is an adult citizen of the United States and has been domiciled in the District of Columbia and has resided continuously therein for more than two years next preceding this application, to wit, for more than nine years.

The defendant, Melvin A. Wertz, is an adult citizen of the United States and has resided continuously in the District of Columbia for more than two years next preceding this application, to wit, for more than nine years.

Second. Petitioner further states that her maiden name was Nora B. Beckley, and that she was lawfully married to the defendant at Orrville, in the State of Ohio, on the sixth day of November, 1890,

by the Rev. E. J. V. Boothe, a minister of the Methodist Episcopal Church, and that no children have been born of said marriage.

Third. Petitioner avers that she is entitled to a divorce from the defendant because of cruelty of treatment by the defendant to her, endangering her life and health and endangering her

2 health to live with the defendant. Among the acts of physical cruelty are those following, viz: During the years 1892 and 1893 the petitioner and defendant lived at house No. 922 N street northwest, in the city of Washington, in said District, and there, in the month of September, 1892, the defendant struck your petitioner. The following acts of physical cruelty were committed when no witness was present competent to testify, to wit: During the years 1894 and 1896, and while petitioner and defendant were living at house No. 920 N street northwest, in said city, the defendant with great force struck petitioner about the face and body, knocking her over against and partially on her bed, face downwards; and on another occasion at said house defendant forcibly pushed petitioner into her room and locked her therein, only releasing her when she was about to call assistance. Since March, 1896, petitioner and defendant have resided at house No. 1210 O street northwest, in said city, and therein, in the fall of the year 1897, defendant struck petitioner a violent blow with his fist, knocking her down and rendering her senseless. Under advice, and because of ill health caused by the cruel treatment of the defendant, and to his knowledge, in the year 1899 it became necessary for petitioner to have and use a separate room in said house, to which the defendant consented; but, nevertheless, the defendant at night sought, as he had theretofore, to deprive petitioner of needed sleep, and so did every night successively for three weeks prior to the 24th day of November, 1899, by means of threats, abuse, and quarrels, in an endeavor to physically and mentally exhaust petitioner, which said conduct terminated on the night of said last-named day in the further

3 continuance of his said abuse and cruelty until about one o'clock a. m., when, and while petitioner was asleep and exhausted because of previously disturbed rest as aforesaid, the defendant broke open the door of petitioner's bed-room (which she that night locked for the first time) and after long-continued threats toward the abuse of petitioner the defendant three different times roughly and with great violence pulled petitioner out of her bed, thereby causing her to fall with great force on the floor and bruising and injuring her, and desisted only when petitioner was about to call on neighbors for assistance. The noise occasioned by these falls was in fact heard by a neighbor, so petitioner is informed and believes.

On the 21st day of February, 1900, while the parties hereto were living at the last-named house, the defendant choked petitioner, who then and therefor endeavored to put defendant's hands away from her throat, whereupon defendant grasped petitioner by the arm with great force and threw her the length of the hall therein, some fifteen feet, and against the side of the house with great violence, thereby wounding and bruising her and causing her to become sick and ill.

On the morning of the 21st day of March, 1900, while petitioner was talking to defendant in the hall of said house and near the front door thereof, the defendant with great force struck your petitioner, knocking her senseless to the floor. So great was the suffering caused by said assault that petitioner was unable to speak or move for a long time.

4 In the month of April, 1900, the defendant threatened to strike your petitioner with an iron poker, saying, while holding the same, "You better look out, for you know what you got the other day, and you will get it again. You need not think because you are a woman I am afraid to do it." Petitioner states that she is slight and frail physically, about five feet in height and of about one hundred pounds in weight, while the defendant is a stalwart man and weighs one hundred and fifty pounds or more.

For other causes of cruelty endangering her life and health, petitioner shows that she was made ill by the cruel treatment of the defendant, and was sick during the whole of the month of July, 1899, with nervous prostration, and at times during said month petitioner was confined to her bed, and during the whole of said month petitioner was unable to do any work.

The defendant did not supply petitioner with food and medicine during said time, and the same and necessary nursing was wholly supplied by a neighbor voluntarily through compassion and not by the defendant nor under any arrangement made by him. Nevertheless during the said illness and while an unmarried man was sleeping at said house, the defendant, so as to be heard by the said lodger, several times at midnight and in the early morning hours assaulted, abused, and quarreled with petitioner because she was not sleeping with him to his gratification, to the great mortification, shame, and mental anguish of petitioner. Petitioner avers that on the night of August 1, 1899, about 2.30 o'clock a. m., the defendant continued the same abuse, and your petitioner (who was slightly improved in health) was rendered thereby violently and suddenly ill. Petitioner further avers that in an effort to restore her health

5 she, on the 15th day of August, 1899, made a visit to her parents in the State of Ohio, returning again in the following November because of the promise of the defendant to cease his abuse and cruel treatment. While on said visit petitioner consulted her family physician about her health and he saw her condition, and the said physician thereupon advised your petitioner that her necessary restoration to her health and the retention of her reason required that she should no longer cohabit with her husband, which said advice the defendant well knew.

Petitioner further avers that on two occasions in the month of August, 1900, the defendant at night twice came into her presence, entirely nude, in an endeavor to wound and mortify petitioner, and he has continued the same cruel treatment above mentioned from the month of November, 1899, culminating about the middle of September, 1900, when at night, while your petitioner was asleep and without her consent, the defendant committed and unnatural

and indecent assault upon her, the circumstances of which are too revolting to spread upon the records of this court. Said assaults were committed when no witness was present competent to testify.

Fourth. Petitioner avers that the said cruel treatment has made her extremely nervous and she is afraid the defendant will do her further bodily harm and injury; that it is not safe for her to live with the defendant, and that she is unwilling to condone the defendant's said misconduct. Petitioner further states that she has notified the defendant of her intention to separate from him and apply for a divorce and of her intention to take with her some wedding presents and gifts made to her by others than the defendant, which gifts, she is advised, are her sole property and are

6       not subject to the disposal of her husband under the laws of the District of Columbia. She has also notified the defendant of her intention to take one small iron bedstead and necessities for her necessary use, which she is advised it is the duty of the defendant to provide for her. In response to said notices the defendant threatens to force himself upon her wherever she may be or go, and greatly fears and has reason to believe and does believe that her husband will harm, molest, and continue to annoy her and do her bodily harm, and she has therefore deferred the said separation until she was in position by the filing of this bill to ask the aid of the court in her protection. Petitioner states further that the defendant dares her to remove a single article of her said property in their said house (which is abundantly and comfortably furnished), and claims the entire ownership of said presents and gifts, the intrinsic value of which is much less than the value of them to petitioner by reason of their associations. Petitioner further states that she is without means to support herself and employ counsel and prosecute this suit, but the defendant is employed in the civil service of the United States at a yearly salary of \$1,400, payable in semi-monthly instalments, and is well able to pay alimony, counsel fees, and the expenses of this cause.

The premises considered, the petitioner therefore prays:

1. That due process may issue and be served upon the defendant, Melvin A. Wertz, requiring him to appear and answer the exigency of this bill.

7       2. That petitioner may be divorced from the bond of marriage with the defendant, or in the alternative that she may be granted a divorce from bed and board.

3. That the court will award petitioner alimony and counsel fees pending the hearing of this cause, and permanent alimony by and in the final decree.

4. That petitioner may have her maiden name of Nora B. Beckley restored to her.

5. That pending this suit and by final decree the defendant may be restrained and enjoined from interfering with, visiting, molesting, hindering, or annoying petitioner, and from claiming or asserting any title to her said property and the said bedstead and necessities in any manner whatsoever.

6. And for such other and further relief as the nature of the case may require.

NORA B. WERTZ.

E. H. THOMAS,  
*Solicitor for Petitioner.*

DISTRICT OF COLUMBIA, ss:

Nora B. Wertz, being duly sworn, deposes and says that she has read the above petition by her subscribed and knows the contents thereof; that the matters therein stated on her personal knowledge are true and the matters therein stated on information and belief she believes to be true.

NORA B. WERTZ.

Subscribed and sworn to before me this 24th day of September, A. D. 1900.

[SEAL.]

LUKE C. STRIDER, *J. P.*

8

*Answer of Defendant.*

Filed November 24, 1900.

In the Supreme Court of the District of Columbia.

NORA B. WERTZ, Complainant,	}	Equity. No. 21745.
vs.		
MELVIN A. WERTZ, Defendant.		

The answer of Melvin A. Wertz to the bill of the complainant.

To the supreme court of the District of Columbia:

For answer this defendant says:

1. That he admits the allegations in the first paragraph of the bill contained.

2. That he admits the allegations in the second paragraph of the bill contained.

3. Answering all of the third paragraph of the bill, the defendant admits that plaintiff and defendant lived at No. 922 N St. N. W., in the city of Washington, and that in 1894 and 1896 they lived at No. 920 N St. N. W., and that after March, 1896, they lived at No. 1210 O Street N. W., and that the defendant weighs about one hundred and fifty pounds, and the plaintiff about one hundred pounds. He denies each and every other allegation in the said paragraph which either directly or indirectly imputes cruelty to him, and calls for strict proof of such allegation.

Answering the allegation that when the plaintiff was ill in the year 1900 the defendant did not supply her with food and medicine, defendant says that at all times during their married life, whenever plaintiff was ill-disposed, he furnished medicine, wine, and such food as was best, and employed physicians when needed, to wit, Dr. Rosier Middleton and Dr. Nancy Richards, and paid

9

the bills therefor. Defendant denies that while an unmarried man was sleeping at said house defendant assaulted and quarreled with plaintiff, so that said unmarried man could hear same, and alleges that said unmarried man referred to by the plaintiff, and whose name has been omitted from the bill by her, defendant believes to be one Charles A. Wolfe, whose attentions to defendant's wife became the subject of remark and criticism among the neighbors, acquaintances, and friends of the defendant, and were the subject of frequent remonstrance on defendant's part, and whenever the conduct of the plaintiff in respect to the said Wolfe was referred to by the defendant, plaintiff became violent and abusive and frequently attacked the defendant physically.

That the defendant, in order to protect the reputation of his wife and his own honor, time and again expostulated with her about meeting the said Wolfe clandestinely and her conduct with *her*; that on several occasions in the summer of 1899 the defendant, on returning home at night, would see the plaintiff lolling in a hammock with the said Wolfe, on the side porch of the second story, near the room occupied by the said Wolfe, and that on reproaching her for this he was met by her with abuse and with the statement that he should go to bed, and she would come when she got ready.

That since August 14, 1899, the plaintiff refused to allow the defendant to sleep with her; that they occupied separate rooms; that she refused to have sexual intercourse with him, and averred that she never would permit him to be as a husband sexually toward her.

10      Answering the allegation that in September, in 1900, while plaintiff was asleep, the defendant committed an indecent assault on her, defendant says that it is the product of a depraved imagination, incapable of either proof or denial except on the part of the parties hereto, and is made with the hope of prejudicing this court against this defendant, as is also the allegation in the said paragraph that the defendant came into the plaintiff's room in a nude condition in order to humiliate her.

4. The defendant denies the allegations in the fourth paragraph of the bill that the plaintiff's health has been impaired and that he intends to do her any bodily injury, and says that on September 25, 1900, while absent at his office, plaintiff left the house 1210 G St., which had been furnished by defendant for her, and where they were living, and took away with her a large part of the furniture and household appliances—two wagon-loads—and conveyed them to 1519 M St. N. W., where plaintiff is living, and that on returning from his office on said day defendant was astonished to find the articles removed and his wife gone; that he has never since that day spoken to the plaintiff or in any way attempted to interfere with or annoy her, though he has seen her in the street and elsewhere.

Answering generally the bill, the defendant says that since said marriage he has supported the plaintiff according to his means in the condition of life that his position and hers demanded; that



about 1896 defendant's salary was \$1,000 per year; that he rented at plaintiff's request the house No. 1210 O St., at a monthly rental of \$32.50, and furnished same, and that they lived there from that

time until she left him in September, 1900; that, in order to  
11 curtail expenses, in the month of March, 1899, the said

Wolfe was taken in as a roomer, he paying \$10 per month for a furnished room on the second floor; that the said Wolfe was a fellow-clerk of this defendant, and that all the difficulty from that time between the plaintiff and defendant has arisen on account of plaintiff's unwifely familiarity with the said Wolfe, and that since her abandonment of the defendant said Wolfe continues to pay her attention, has frequently been seen with her, and corresponds with her, as the defendant is informed and believes.

Defendant further says that plaintiff is possessed of an ungovernable temper, which she did not try to control; that she is an extravagant talker, with a tendency to prevarication, and susceptible to flattery, which makes her feel important, and, in consequence, overbearing. She would talk to his friends in a slurring manner about his parents and relatives, and intimate by word and action that she was of better clay than her husband, and that she was conferring a favor on him by living with him; besides, she would rarely let an opportunity pass to belittle or humiliate him in the presence of friends or strangers. She endeavored to injure his character and standing in the community by circulating slanders about him, which was also for the purpose of exciting sympathy for herself.

In fact, she was a despot in his home. All she thought that he was good for was to earn the salary and to wait upon her. It made no difference what his views were or what stand he might take on any matter, she almost invariably took the opposite, as though from duty. She has repeatedly told him that she would not give up the friendship of this man Wolfe for him. She also threatened that if

12 he turned him (Wolfe) out of their house that he (the defendant) would regret it only once, and that would be all his life.

MELVIN A. WERTZ.

A. A. LIPSCOMB,  
*Solicitor for Defendant.*

I, Melvin A. Wertz, having been first duly sworn, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

MELVIN A. WERTZ.

Subscribed and sworn to before me this twenty-fourth day of November, A. D. 1900.

J. R. YOUNG, *Clerk*,  
By R. J. MEIGS, JR., *Ass't Clerk*.

13      *Order Striking Out Certain Portion of Answer.*

Filed February 6, 1901.

In the Supreme Court of the District of Columbia.

NORA B. WERTZ, Complainant,	}	Equity. No. 21745.
<i>vs.</i>		
MELVIN A. WERTZ, Defendant.		

On motion of the counsel for petitioner, it is by the court, this 6th day of February, A. D. 1901, ordered that that portion of the defendant's answer contained in the third paragraph thereof, beginning immediately after the name "Charles A. Wolfe" and ending with the word "ready," and that portion of the defendant's answer contained in the fourth paragraph thereof, commencing immediately after the phrase, "that the said Wolfe was a fellow-clerk of this defendant," and continuing to the end of said fourth paragraph, be, and the same are hereby, stricken out of the said answer.

A. C. BRADLEY, *Justice.*

14      *Decree Dismissing Bill.*

Filed October 21, 1901.

In the Supreme Court of the District of Columbia.

NORA B. WERTZ	}	Equity. No. 21745.
<i>vs.</i>		
MELVIN A. WERTZ.		

This cause coming on to be heard on the bill, answer, and testimony taken pro and con, after argument by counsel for the respective parties, it is, this 21st day of October, 1901, by the court ordered, adjudged, and decreed that the bill be, and the same is hereby, dismissed.

A. C. BRADLEY, *Justice.*

15      *Appeal.*

Supreme Court, District of Columbia.

NORA B. WERTZ	}	Equity. No. 21745.
<i>vs.</i>		
MELVIN A. WERTZ.		

The clerk will please enter this appeal from the decree of the court dismissing the bill of complainant, to the Court of Appeals and issue citation without copy.

E. H. THOMAS,  
*For Complainant.*

Nov. 4, 1901.

Appeal entered and citation issued.

16 In the Supreme Court of the District of Columbia.

NORA B. WERTZ }  
 vs. } No. 21745. In Equity.  
 MELVIN A. WERTZ. }

The President of the United States to Melvin A. Wertz, Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal noted in the supreme court of the District of Columbia on the 4th day of November, 1901, wherein Nora B. Wertz is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 4th day of November, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 6 day of November, 1901.

A. A. LIPSCOMB,  
*Attorney for Appellee.*

17 *Memorandum.*

November 7, 1901.—Appeal bond filed.

18 *Narrative of Testimony.*

Filed December 9, 1901.

In the Supreme Court of the District of Columbia.

*Complainant's Testimony-in-chief.*

Deposition taken before me, Thomas W. Orr, a commissioner duly appointed and qualified in the premises, at my office in Orrville, in the county of Wayne and State of Ohio, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the plaintiff in an action pending in the supreme court of the District of Columbia, in which Nora B. Wertz is plaintiff and Melvin A. Wertz is defendant.

H. BLANKENHORN, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows :

Q. State your name, age, occupation, and place of residence.

A. My name is H. Blankenhorn; I am forty-four years of age; I am a physician by occupation, and I reside at Orrville, Ohio.

Q. How long have you resided at Orrville?

A. Eighteen years.

19 Q. How long have you practiced medicine, and what experience have you had in the treatment of diseases of women, if any?

A. I have practiced medicine eleven years, and have had experience in the treatment of diseases of women, constantly so, during my practice.

Q. Do you know the parties to this suit, and how long have you known them?

A. I do, and have known them for about fifteen years.

Q. During the time you have known the complainant, have you attended her and the members of her father's family?

A. Yes. I have been their family physician.

20 Q. Were you professionally consulted by the complainant during the months of August and September, 1899? And, if so, give dates, if you can.

A. During her visits with her parents in the months of August and September, 1899, I was consulted by her professionally a few times. I cannot give dates specifically, but remember the most important consultation was late in her visit.

Q. State the physical condition of the complainant when she first consulted you in August, 1899, the inquiries you made of her about the cause of that condition, if you found her suffering from any ailment or disease, the answers she made to such inquiries, and whether you made any physical examination of her and what the result of that examination was.

A. She was in a general run-down condition, a neuresthenic, sleepless, and highly nervous in every sense. I inquired whether she had been overworked physically; to which she answered she had not. I asked her whether she had recently a serious sickness; to which she answered she had had nervous prostration. I asked her whether or not she could give a cause for her sleeplessness; she answered she could not. I then proceeded to make a physical examination. Her heart's action was rapid and feeble, the digestive function was impaired, and on examination I found her suffering from an endometritis. The uterus was large, tender, and with a downward tendency. She also was suffering from a double salpingitis, ovaries on both sides, large, inflamed, and exquisitely tender.

Q. State specifically and in detail the advice you gave her.

A. I advised her that conditions in her life should be changed or she would become a nervous wreck; that she should place herself in a condition to avoid worry, excessive physical exercise, seek cheerful society, be in the open air as much as possible, and should be under the advice of a competent physician; to refrain from the marital relations while this condition existed.

21 Q. State whether the condition you describe was, in your opinion, the result of any and what cruel treatment by the defendant.

A. I am not in a position to say as to the influence of the defendant in bringing about this condition.

Q. Did you advise the complainant that if she would retain her reason she must refrain from sexual intercourse with her husband, and if you did not specifically advise, what advice in that regard did you give her, and why?

A. I stated to her that if she would retain her reason the condition of her pelvic organs should be improved and rendered free from disease, and that this end might be attained it would be necessary for her to refrain from sexual intercourse while this condition existed. I advised her thus for the reason that sexual indulgence would favor the progress of the disease.

Q. Did the defendant subsequently, and at what time, if any, call upon you and seek in any way to cause you to modify your opinion or refuse to give it if called upon?

A. The defendant called upon me some time early in November last; he did not seek to influence my opinion in this case, to my knowledge, neither did he ask me to refuse to give my opinion if called upon.

Q. State generally any and all facts bearing upon this case within your knowledge, and about which you have been interrogated, in favor or against either or both of the parties to this cause.

A. I have nothing further to state.

Q. When the complainant consulted you in August, 1899, what, if anything, did she say to you as to the causes which brought about her then physical conditions?

A. She stated that in her opinion she would never get any better so long as she lived with her husband, and that in her opinion  
22 her disease was brought on and continued by her sexual relation with her husband, not only because of the frequency of the sexual act, but also because of the manner. She also maintained that in her opinion her husband was impotent.

Q. Speaking from your knowledge as a physician, would such sexual abuse as she then described have a tendency to produce or bring about the physical condition she was then in?

A. Yes; it would.

23 *Testimony of Mary E. Beckley, Taken at Orrville, in the State of Ohio, on the 11th day of March, 1901, under Deposition.*

I am the mother of the plaintiff in this case. My daughter's name before her marriage was Nora Belle Beckley. I was present at the marriage of the parties to this suit, which occurred at our home in Orrville, Ohio, on the 6th day of November, 1890. They were married by the Rev. E. J. V. Booth, a Methodist minister then stationed at that place. There were about 150 people present. The complainant and defendant have resided in the city of Washington about ten years. I visited my daughter in September, 1892, and they then lived at #922 N street. The family consisted of herself and husband; she did her own work and was kind to her husband, always tried to screen him and keep me from knowing how he was treating her. I witnessed an assault by the defendant on the com-

plainant while there; we were getting ready to go sight-seeing; he was hindering, teasing, and tormenting her, and because she wanted him to quit he struck her very hard in the face, and was very angry with her, his lips and countenance showing how angry he was. During nearly all the time I was there he was ugly and cross to her, falling into a passion whenever any little thing went wrong.

The complainant visited us at our home in Orrville, Ohio, arriving on the 16th day of August, 1899, and remaining until after the election in November. When she arrived she was very weak and could hardly walk, was extremely nervous, pale, and thin, and without any appetite, had to lie down and rest soon after she came. She told me how cruel her husband had been to her, and that she was not well, that defendant had neglected her when she was ill and was very unkind to her. I asked her what was the cause of her being in such a condition, and she told me it was because of the cruel treatment of the defendant. She said that defendant would get angry at her and strike and knock

24 her down without any provocation, and that he had done so repeatedly; that defendant never had been good to her, but that of late he had been treating her worse, and had been refusing to give her sufficient money for her needs; that she had consulted physicians and they had given her prescriptions and had recommended wines and other things as necessary for her, but the defendant had refused to get said prescriptions filled, or to allow her money with which to do so, and had refused and neglected to provide the wines and other remedies so recommended. She had to rely upon her neighbors for care and attention during the time she had been ill; that defendant pretended not to believe that she was ill and accused her of shamming illness. The complainant corresponded with me before and after the said visit and complained of cruel treatment. I am acquainted with the handwriting of my daughter, and herewith hand you all the letters thus received from her now in my possession. Of course I received more than this, but they have been lost and destroyed, and the five I have handed you are all I am able to find. Said letters are offered in evidence and material parts thereof attached hereto.

During the visit of the complainant in August, 1899, she consulted Dr. H. Blankenhorn, our family physician, about her health.

When the defendant visited at our house he was in the habit of lying in bed very late in the morning. On one of these occasions he arose at 11 o'clock, and upon his wife suggesting that as it was only an hour until dinner time, and he probably would not care to eat until then, he became very cross and abusive, and went up street and complained to Mr. Beckley about it.

During the period of time I visited them and when they visited our home I observed that the defendant was of a very jealous disposition; seemed to be jealous of every one who appeared to be fond of her, or that she seemed to care for, whether it was her brothers and sisters, her father or myself, or even of children. I have seen

25 him do many things in the presence of others that was humiliating to the complainant in the extreme ; have seen him walk up to her and put his hand in her bosom, sit down beside her in company and lift her clothes from her limbs and put his hand under her clothes.

26 *Testimony Taken Before Margaret A. Murray, Examiner Duly Appointed by the Court.*

Complainant's testimony.

LIZZIE PARKER, a witness produced by complainant, testified as follows :

I did washing for the parties to the suit in November, 1899, and for two years previously, and continued so to work for them until their separation ; went to their house once every two weeks ; saw marks on the body of complainant in November, 1899. The marks were on her left hip and limbs, above the knee. Complainant was in bed when she showed the marks to me. I found her in bed that morning, and when I saw her I said, "Gracious! you look bad. What is the matter with you?" When she commenced to cry and told me that her husband had knocked her down. She looked badly and was bruised with pretty good bruises, which made me remark to her, "If he goes after you again like that he will finish you up." On a previous occasion I found her lying on a couch downstairs, and was told by her that she had fainted and was sick, and she certainly looked sick.

On another occasion, about two weeks after I saw the marks on her limbs, and while I was engaged in scrubbing the floor, I heard the defendant telling his wife that he was going to rake the fire down. She asked him not to do so, that she had dinner on, to which the defendant replied that "he guessed he was boss in his own house, and if she bothered him he would lick her with the poker." At that time the defendant had a poker in his hand and looked ugly, as though he was angry. She said she was afraid of him, and  
27 wanted me to come over to the house and live with her. I often heard them quarreling ; in fact, nearly every time I was there. She seemed to treat her husband all right, so far as I could see.

Cross-examination :

Never saw the defendant strike his wife. The bruises mentioned were as large as a silver dollar and bigger. Those on her hip and on her knee were bigger than a half dollar. Never told the defendant about the bruises. Did not tell Mrs. Fryer that she saw Mr. Wolfe sitting on Mrs. Wertz's bed when she was in bed.

Counsel for the defendant objects to all statements made by this witness on direct examination as coming from Mrs. Wertz as hearsay.



## Redirect:

Mrs. Fryer mentioned the Wertz divorce case to me and wondered when it was coming up; asked at different times whether the case had come up. Had another talk with her on the subject within a week. Mrs. Fryer did not say that she had been a witness for the defendant. Witness' daughter in July and August was a little child eight or nine years old, able to do no work but wash dishes. She was at the Wertz house three pieces of evenings between twelve o'clock m., and 2 p. m.

LULA S. FLUCKEY, a witness produced by complainant, testified as follows:

I called at the house of the parties to this suit on the 21st of March, 1900. The complainant was so long in coming to the door in answer to the ring of the bell that I thought she was not at home. She finally came, however, and opened the door, and, when I saw her, her appearance made me exclaim, "Why, Mrs. Wertz, are you sick?" She was pale and thin, and, from the appearance of her eyes, seemed to have been crying; she was careworn, haggard, and appeared worried.

28        No cross-examination.

ZENOBIA RICHARDSON, a witness produced by the complainant, testified as follows:

I reside at 1212 O street N. W., and have known the parties to this suit since the fall of 1898; made their acquaintance by living next door to them, they then living at 1210 O street N. W. I remember the Sunday in July, 1899, when Mrs. Wertz was taken sick; saw her that day when she was returning from the car with her husband and Mr. Wolfe. She looked so pale, and they seemed to be almost carrying her, so that I ran to them and asked what was the matter. I found that she was suffering very much from prostration and weakness, and she said that she had not been feeling well for some days previous. She was sick about three weeks. During this time I saw her at least twice a day. In the morning I would take her breakfast to her before going to office. I was employed at the War Department, and the hours are from 9 to 4. And I would again take her dinner to her in the evening, and when she was at her worst I spent most of the entire evening with her. During the day she was left entirely alone except as my niece would, once in a while, go in and sit with her, which was not very often, as she had company at that time. Her husband was employed in the Treasury Department, and didn't stay at home an hour during her sickness. If he came home direct from office he would get home about half past four, but very often it was nearer half past five. He would stay at home long enough to cook himself something to eat, as I didn't carry his dinner to him. Then, usually speaking, he would go out and remain until after I had retired for the night, which was about half past ten. Mrs. Wertz had no



nurse during this sickness but myself. She was supplied with medicine such as I supplied her until she had been sick, I would judge, about ten days, when I insisted to Mr. Wertz that my medicine was not doing her the good that it usually  
29 had done every one, and that he must get a doctor. He called in Dr. Middleton, who called once or twice. The doctor told her that the medicine she had been taking ought to have been beneficial to her, and rather intimated that there must be worry on her mind that she didn't get better. Mrs. Wertz was confined to her bed about two weeks, and the third week she should not have been out of bed. When she got out of bed she was so weak she could scarcely walk across the floor, and didn't do so without tottering. I was not requested to furnish medicine, and he did not offer to pay for same.

Mrs. Wertz, about the 1st day of August, 1899, was very weak, as any one would be suffering from nervous prostration. Her nerves were strung to the highest pitch, and about this time she was liable to faint if hardly moving in bed—that is, from the slightest exertion. She left for Ohio about the middle of August, 1899. I coaxed her to go on this visit for the reason that she would get better for a day, and the next day when I would see her she would be much worse than she had been for several days, so that it seemed to me that it would be impossible for her to get permanently well as long as she staid there.

Q. About the 25th day of November, 1899, or prior to that, had Mrs. Wertz spoken about the locking of her bed-room door to you, or made any complaint about her husband to you?

A. Yes, sir.

Q. Do you know whether she did carry that into effect or not?

A. One Saturday night about that time I was sitting in my house alone, the rest of the family being asleep, when I heard a noise from next door that sounded like the falling of a piece of furniture. I ran to the hall that I might be able to hear plainly, and heard Mr. and Mrs. Wertz talking in rather loud tones, but the only thing I could distinguish was Mrs. Wertz saying, "If you don't go away I will go in next door." Afterwards, the next morning, Mrs.

30 Wertz told me that she had locked her bed-room doors in order to try to get some sleep, as she had not had a night's rest since she returned from Ohio; that when Mr. Wertz found they were locked he worked at the doors for over an hour until he had taken the locks off and gotten into her room. She said that during that time the only thing she could do was to pray, for she felt that if he ever got that door open that he would certainly kill her. When he got into the room she said that he pulled her out of the bed, and that was evidently the noise that I had heard, and the loud talking afterwards.

Q. Did the noise come from the upstairs part of the house or the downstairs?

A. Mrs. Wertz' bed-room was just opposite mine, and the noise was from her room; that is the reason I was so frightened.

Q. And about what time of night was it when you heard this noise?

A. As near as I can remember, it was midnight.

Q. When you saw Mrs. Wertz the next morning, what was her condition?

A. She was very pale and excited, and looked as though she could hardly stand up.

On the 21st of February, 1900, Mrs. Wertz came into my house and said that during the day she had written a letter to her father, but that it had been raining so hard she did not go out to mail it, but put it in her bosom to mail later in the evening. Her husband saw a corner of the letter and came up behind her and tried to get it from her. She showed him the envelope that he might see to whom the letter was addressed. In trying to take this letter from her, she said that once he pushed her or threw her the entire length of the hall. When she was talking to me her hands and wrists were very red and quite swollen. The hall is 18 or 20 feet in length, and she said she thought her time had come. She remained in my house until her husband went out of their house.

31 On the night of the 21st of March, 1900, Mrs. Wertz came to my house, and I was at once struck by her appearance. She was as white as a ghost and could scarcely walk across the floor. In response to my inquiries she told me that in the morning her husband had become angry with her, and when she said something to him he hit her in the face with the back of his hand. In defending herself, she remembered that he came towards her the second time with both fists raised; that the next she knew she was lying on the floor, where apparently he had knocked her. When he saw that she could not raise herself he picked her up and carried her to the lounge, and then went to the kitchen and brought back a bucket of water, at least a quart, and poured it on her head, and opened the front and back of the neck of her dressing sack and poured the water down her bosom and back, and then taunted her and then asked her if he should remain away from office. She could not speak, but shook her head no. Then he went away and left her. Her hands were scratched when she showed them to me that night, and the next day she showed me where her arms had turned black and blue. She also told me that there were black and blue places on her body, but I didn't see them. Her hair was not dry yet, and I was very much worried about her for the reason, more particularly, that it was at the time of her monthly sickness, and I realized that lying all day in the condition that she did would be very likely to injure her for life. I immediately got her hot drinks and did what I could to help her. She told me that Mr. Wertz knew the condition she was in when he poured the water on her. She also told me the next month that she was suffering with a great deal of pain, something that had never happened to her before. This continued each month for some time.

It was a common occurrence for Mr. Wertz to treat his wife with indecent familiarity; in fact, I did not go in as often as I otherwise

would have done had it not been for such things as this happening.

32 I know that Mrs. Wertz did her own housework, and part of the time her washing and ironing.

Cross-examination :

Pulsatilla, macrotys, and wines were prescribed by me, but I am no physician. I understand the use of family medicines on ordinary occasions.

Counsel for the defendant objects to statements made by the complainant to the witness on the ground that the same are hearsay.

Mr. Wolfe and the complainant have been together in my house the same as one friend calling there is liable to meet another at any time, but that is the only way that they have seen each other there.

Mr. Wolfe has called at my house, on an average, I presume, of once in two or three months. As a usual thing, when he did call, the entire family was at home, and on no occasion were Mr. Wolfe and Mrs. Wertz alone together in my house.

Mr. Wolfe was a friend of Mr. Wertz, and I have heard him say that Mr. Wolfe was a very nice young man and he would like very much to have him come and room at their house.

When I carried her meals to her in August I always saw Mrs. Wertz, as she was in bed, and sometimes her husband.

I never saw Mr. Wolfe attending Mrs. Wertz, nor did I ever see him carry water to her room. When she was in bed I have seen him go to the door and inquire how she was. When she was on the lounge in the parlor I have seen him sitting in the parlor talking the same as any one else.

CHARLES A. WOLFE, a witness produced by complainant, testified as follows :

I came to Washington September 28, 1898, and have lived here ever since. I met Mr. M. A. Wertz, defendant in this suit, 33 during the month of November, 1898. At his request, I rented a room at his house, No. 1210 O street, N. W., on April 22, 1899; which room I rented until September 30, 1899. In renting this room he told me I was to have free use of the parlor, the piano; in fact, that it was to be a home for me in every sense of the word. Those living in the house at the time were Mr. and Mrs. Wertz, Miss Wright, and myself.

Mrs. Wertz was taken sick on Sunday, July 23, 1899. Mr. and Mrs. Wertz and myself started downtown for dinner, but when we got as far as 11th and O street-, while waiting for a car, she was taken ill and fell over backwards in a faint. Mr. Wertz and I assisted her back to the house, and while going in Mrs. Richardson saw us and came in. She took Mrs. Wertz in charge and administered to her wants. In about an hour's time Mr. Wertz and myself went to the Wilson café for our dinners. After dinner he went, or at least he said he was going to the Raleigh hotel, and I went back

home. He came in about 5 or 6 o'clock and stayed until about 9 o'clock, at which time he went out, not returning until about one o'clock Monday morning. Mrs. Wertz was in bed about two weeks. She was able to be around with a little assistance about a week before going home on the 15th of August, 1899. After being taken sick, no doctor was called for about a week or ten days. During this time Mrs. Richardson furnished what medicine she had. About this time a doctor was called, who called two different times. He said she was on the verge of nervous prostration. She had no nurse, nor was any one there to take care of her. During the day she was left alone. Mrs. Richardson used to bring or send in her breakfast and dinner every day. During her illness, in fact for some time previous, Mr. Wertz was out nearly every night until from 11 to 2 o'clock the next morning. During the time she was ill he was not attentive to her. When she was convalescing and just able to be around by the assistance of some one, or the use of a chair, I have seen him come in and scold and misuse her  
34 until she would totter across the room to the couch and lay there and cry. Her nerves were very much affected and the least noise would cause her to almost jump out of bed. He would persist in slamming doors, and it seemed like make as much noise as possible.

One morning about 3.30 a. m. about August 1st, 1899, I was awakened by a noise from the front room. I listened for a moment and learned that he was quarreling with her again. He commenced by teasing her, and from what I could hear it was plainly evident that he was trying to get her to submit to his sexual desires. I heard her say she was too ill and weak. He still persisted, and finally when refused absolutely became very angry, and among other things said, "I don't give a dam- if you never get well." At about this time he pushed the bed over, shut the hall door and locked it, and finally went to his bed in the front sitting-room. By this time Mrs. Wertz was moaning so I could hear her in my room. In a few moments I heard him go to her room, then down the front stairs and up the back ones and call Miss Wright. He asked her if she would not come and see Nora, that she was much worse. He said, "Come quick, I believe Nora is dying." I heard Miss Wright go down the back stairs and up the front and to Mrs. Wertz' room. I got up about 7 o'clock that morning, and in passing from my room to the bath-room (by that time the door had been opened) I could see Miss Wright fanning Mrs. Wertz and trying to quiet her. Mrs. Wertz was clinging to the bed-clothes with both hands. I saw her before going to office and she looked much worse than I had ever seen her, and was almost too weak to talk; sort of talked between breaths. She said that morning that she never thought she would live till morning; she was afraid he was going to kill her right there.

One evening directly after this Mrs. Wertz was lying in the hammock, and Mr. Wertz and myself were sitting in chairs on the back porch. He became vexed at something and commenced quarreling

with her again. I went to bed about half past nine. The windows to my room were opened and I could hear all that was  
35 said. He recalled former quarrels, and finally wound up by saying, "God dam- you to hell, you will pay for this." He then went to bed. Mrs. Wertz stayed in the hammock all night and was there the next morning when I got up.

About the 10th of August, 1899, a little after seven o'clock in the morning, the time I usually got up, I heard him worrying her. It was plainly evident that he was trying to get her to submit to his sexual desires again. I heard her remonstrating with him. I got up directly and paid no more attention to it. When I was getting my wheel out, and getting ready to go to my breakfast, about eight o'clock, I saw her sitting in the parlor. She was in a very flushed condition and looked very irritated.

Just before she went home the 15th of August, and many times before she was taken sick, while the three of us were sitting in the parlor, I have seen him pull her on his lap, run his hands over her breasts, sometimes underneath her clothing, run his hands behind and between her limbs and sort of pinch her, and carry on this way until she would exclaim, "Melvin, do stop this, you are acting dreadful."

#### Cross-examination :

Dr. Middleton called twice. The one time in particular I remember of, Mr. and Mrs. Wertz and myself were sitting in the parlor, and I left the room as soon as he came. When the Dr. called, Mrs. Wertz was lying on a couch in the parlor. I did not see her jump out of bed at any time, but very nearly so when there was any sudden noise—doors shut or any loud noises. I am single and 26  
36 years of age. I saw Mrs. Wertz lying on the couch in the parlor, where she usually stayed. I also saw her in bed in her room, but not often. I also took her a glass of water on one or two occasions. My room was not adjoining hers, nor was there a door entering from one room to the other. Her room was about ten or  
36 twelve feet from mine, and in going from my room to hers one would have to ascend three little steps and pass the bathroom, her room being the front hall-room. When I heard the noise in Mrs. Wertz' room in 1899, I was in my room. The door of my room was closed, but the transom was open. The door to her room was open at that time, but was closed later on.

When Mr. Wertz went to her room I heard him say that he wanted to sleep with her. I heard him when he got in bed, said he was going to sleep with her, lay up to her, and from the noise that was made it was very easy to understand his purpose. I saw her the next morning. I don't remember whether Mr. Wertz was in the front room at that time or downstairs.

I also talked with her, her husband being right beside me part of the time. The rest of the time he was either in the front room getting ready to go to office, or else was downstairs.

The time Mrs. Wertz stayed in the hammock all night, I heard Mr. Wertz ask her why it was she wanted to go home; that he did not think it was necessary for her to go. She told him she wanted to go because she would never get well if she stayed there. He then said, "He would be God damned if she would ever go with his consent. That if she did go she could go to the devil, and he didn't care if she never came back. He kept this up, referred to members of her family, reiterated former quarrels, and finally, just as he left, he seemed to be very angry, and I remember very distinctly of his saying, "God damn you to hell, you will pay for this." He then went to bed in the front room adjoining the hall-room. I went to bed about half past nine, Mr. Wertz going about half past ten. I did not see Mrs. Wertz again until the next morning when I got up about half past seven. She was then lying in the hammock.

37 CHARLES A. WOLFE recalled for further cross-examination:

On the 30th of May I took the trip to Analostan island with Mr. Cox, Mr. Beckley, Mr. and Mrs. Wertz; we arrived at the island about 1 o'clock and left there about 6 o'clock. When we arrived I fished a few moments, but had no success; never had at fishing. Mr. Wertz suggested that Mrs. Wertz and I read; Mrs. Wertz had a magazine and I had the morning paper. We took the lunch basket at the suggestion of Mr. Wertz and went over from where the boat was anchored, about 150 yards, and were within hearing distance of them all the time we stayed there. After reading I laid down and slept for about an hour, then we went back to where we left the boat, and instead of finding the boat there we found several boys in swimming; we went around the edge of the island and found Mr. Wertz, Mr. Cox, and Mr. Beckley over on the north side of the island with the boat. This was about 5 o'clock; we had been separated from them about three hours; after we found them we took lunch, what we had brought from home and some they had brought over from Georgetown. I do not know where Mrs. Wertz was while I was sleeping; when I lay down she was not far away, and when I awoke she was some little distance off, gathering flowers. All I heard said about our absence was, where had we been, which we told. After we had lunch we all crossed over the island to what I understood was an old prison, then went back to the boat and directly after that left the island. A few moments after I awakened from my sleep Mrs. Wertz and I commenced to hunt for the party.

*One Sunday night.*

One Sunday night after we had been to church I went down to the Portland drug store to get a glass of soda and started home up Vermont Ave. Just after I had crossed Rhode Island Ave. by a little triangular park I met Mrs. Wertz; she was alone; I did not know how she reached that point; I spoke to her and we then

38 separated; I did not escort her home because it was not my habit to do so; I did not see her husband; it was about half past nine o'clock.

I was at the graduation exercises of Miss Nellie Jordan, but not with Mrs. Wertz; I was alone there during the whole exercises.

39 W. KARL BECKLEY, a witness for complainant, testified as follows:

I am a brother of the complainant. I was present at the marriage of the parties to this suit, which occurred on the 6th day of November, 1890, at Orrville, Ohio. They were married by the Rev. E. J. V. Booth, a Methodist minister then stationed at that place. They started for Washington, D. C., on the 14th of November, 1890, where they have ever since resided. (Identifies marriage certificate which is offered in evidence.)

I have made four previous visits to the city of Washington, the first in May or June, 1891, and I stayed with them a week or ten days. They were then living on Ninth street N.W. I again visited them in November, 1892, and stayed a week or a little over. They were then living on N street N.W. My next visit occurred in 1897, when I remained with them about one year, and they lived at that time at No. 1210 O street N. W. The last time I visited them was in May, 1899, during the peace jubilee, when I stayed about one week.

During my visit in 1891 my sister and brother-in-law seemed to get along very well together, but in 1892, when I visited them, I found him very cross and disagreeable, though I could see that my sister treated her husband with affection and did her best to make everything appear harmonious.

During my visit to them in 1897 my sister treated her husband affectionately, but they had a great many quarrels, all of them brought on by Mr. Wertz. A great many times when these quarrels occurred I would leave the house, and many times at night I have heard him quarreling with her and scolding her and could hear her crying. I never mentioned these things to my sister, nor did I mention them to Mr. Wertz, nor did my sister say anything to me about them. I didn't like to interfere and was afraid that I would have to interfere if I had stayed in the house, and that was one of the reasons why I went out when I did. During this visit of

40 1897 I saw him strike her, on one occasion, in the face, with his open hand, and saw him push her around a number of times very roughly while he was angry, and when he would see me he would make out he was only fooling. During these times my sister was much distressed and would go upstairs and cry, and it seemed to me that she didn't want me to notice that he was treating her in an ugly manner. I never saw or knew my sister to do anything that would justify these actions on the part of her husband. I remember one of these quarrels was because I picked up a paper which came from home and read it for about five minutes after they went to bed. I heard him scolding her because I was reading the paper, and then I put the paper down and went to my room. Several times at night when I heard him abusing her and heard her crying, and when I didn't go out, I would open my door. I



thought he was using her pretty roughly, and I opened my door so that he could hear it. That usually had the effect of stopping his abuse. At times during the year of 1897 while I was visiting my sister she was very weak, and it seemed to me when my sister was weakest her husband became particularly disagreeable. At different times she was unable to be up, and would lie down most of the time.

I have on different occasions seen him treat her indecently when company was there, and also when only the three of us were present.

#### Cross-examination :

Many instances of scolding of complainant by her husband are these: I remember that he scolded her once coming home from church, but I do not remember what he said. When he began, I started and walked on ahead. Another time was one evening after we had received the paper from home. They had read it and gone to bed when I picked the paper up and commenced to look over it. I had not been looking at it more than five minutes when he commenced scolding her about my sitting up. I got up and put the light out and went to bed. The defendant told his wife that he wanted her to tell me to go to bed. She said that she would not do it. Many times at night I have heard him scolding her, as I  
41 have stated, but could not understand what was said. There were different occasions when I heard these scoldings and heard her crying, and the defendant was doing most of the talking. I do not know how many times I have gotten up and dressed myself and gone out on a five-mile walk at twelve o'clock at night. I know I have done so quite a few times; not less than eight or ten. I never spoke to the complainant nor did she to me about these quarrels.

The occasion in 1897 when I saw the defendant strike the complainant in the face happened in the kitchen. I do not remember what he said—he was scolding her about something. She went into the dining-room, and this happened just as I was going from the dining-room to the kitchen. I did not say anything to either of them about it, because I thought it was useless for me to interfere and get into trouble with him. I considered him a better man than I if it came to blows, and was afraid of him. I have never known him to commit any act of violence that would lead me to fear him. I have seen him cross at different times when he looked vicious enough to tear anybody as small as I into pieces, and I did not care to get in a hand-to-hand contest with him. He was jealous of me if my sister would go places with me.

One of the parties who was present when I saw her treated indecently was a young lady by the name of Kate McClellan. She is now married and her name is Lothrop. She lives at Milford, Massachusetts. He treated her indecent in the presence of Mrs. Lothrop by lifting her clothes and putting his hands under her clothes. We were all in the parlor at that time. He used to do this at different



times when there would be others around. Many times he has lifted her clothes above her knees. My sister protested and tried to keep her husband from doing this—scolded him about going on this way.

42 Mrs. N. J. MARTIN, a witness for the complainant, testified as follows:

I have known the parties to this suit for about ten years, and have been friendly with them ever since. Since October, 1899, Mrs. Wertz has called at our house very frequently. She often stayed until 10 o'clock, and I remember one night that it was after 11 o'clock when she left. She has also continued to call since she separated from her husband. My husband always accompanied her home or to a U Street car. Mrs. Wertz' reputation in reference to her moral character and good name is excellent and good, and she is well thought of in the community.

Mrs. Wertz told me that for three weeks prior to the 24th of November, 1899, the defendant, by means of threats, abuse, and quarrels, endeavored to physically and mentally exhaust her by depriving her of any sleep or rest. (Objected to as hearsay.) She also told me that on the night of November —, 1899, this abuse culminated about 1 o'clock in the morning by the defendant breaking open the door of her bed-room, and three different times roughly and with great violence pulled her out of her bed, causing her to fall with great force on the floor, and bruising and injuring her. She also told me that on the 21st day of February, 1900, the defendant choked her and threw her the length of the hall in such a manner that she fell against the wall, bruising herself. She also told me that on the 21st day of March, 1900, while at the breakfast table, he had threatened her and told her what he was going to do in regard to their trouble. He arose from the breakfast table and went into the hall to get his hat prior to going to office. He had forgotten his lunch. She carried it to the door to hand to him and said, "You couldn't make a judge or a jury believe that." That was the first re-

43 ply she had made to his threats, and he struck her with the back of *her* hand in the face, and then she saw his hand raised to strike her again and the first thing she knew she was on the floor, part of her body in the dining-room and part in the hall. She said she didn't know whether it was minutes or seconds, but he picked her up and carried her and laid her upon the couch in the parlor, her head bending backwards so that it was uncomfortable, but she couldn't move it and couldn't speak. He then went to the kitchen and procured a saucepan of water, pulled her dressing sack open from the neck and poured the water over her breast, she not being well at that time, and he said to her, "Had I better remain home from the office with you?" She made no reply. He remained for a short while and then said, "Possibly you will revive sooner if I leave you," and then left the house. (Same objection.) Mrs. Wertz told me, after she returned from a visit to her home in Ohio in the

fall of 1899, after dinner one evening Mr. Wertz said to her, with an oath, "I am going to sleep with you tonight; I will show you who is master." I begged her to stay at my house that night, I was afraid he would kill her, and she said, "Well, it wouldn't make any difference if he did; I would rather be dead than live the life I am living." She also said that if he held a loaded pistol to her head and said he would shoot her unless she would submit to him, she would say "Shoot." During the time she told me of this trouble she never said one word about applying for a divorce. She said she would live with him if he would live under the conditions the doctor told her were necessary for her to comply with. At the time Mrs. Wertz made complaint to me of the threats which she said occurred on the 21st of March, 1900, she showed me bruises on her right arm just above the wrist (indicating) and scratches—not exactly  
 44 scratches, but a piece of skin which had been cut, like a finger-nail scratch. This bruise on her arm was about as large as a silver dollar. During the times of these complaints Mrs. Wertz' condition of health was very different than when I first knew her. She seemed weak and nervous, looked poorly, and cried a great deal, as though she was in mental trouble. In the spring of 1900 I bought cake of Mrs. Wertz, in order that she might have some money. She told me her husband didn't furnish her money, and was not willing to furnish her with such things as she needed to eat.

#### Cross-examination :

I never saw Mr. Wertz commit any of the acts that Mrs. Wertz told me about. I never saw Mr. Wertz strike his wife nor inflict the bruises upon her body that she said he had, nor treat her with indignity.

Miss NELLIE JORDAN, a witness for complainant, testified as follows:

I have lived at 1212 O street N. W. since September, 1898. The parties to this suit were then living at 1210 O street. Mrs. Wertz left in September, 1900, and Mr. Wertz gave up the house in October, 1900. Mrs. Richardson is my aunt. When we first moved on O street Mrs. Wertz rarely called to see us, but as the intimacy grew she came in often, and towards the last almost every day. Mrs. Wertz was taken sick in July, 1899, on Sunday, and continued sick until about the middle of August, when she went to her home in Ohio. From Sunday, the 23rd day of July, until Mrs. Wertz went home in the middle of August, I was in her house every day at noon, and often at other times. I went in to take her lunch and get anything else she wanted. Lunch was prepared at Mrs. Richardson's house, my aunt's. Nothing was prepared for her in  
 45 her own house during my visits. I never saw Miss Emma J. Wright there during these visits. I have known her for over two years. I went all over the house during the

times I visited there—July 23rd to the middle of August—but Miss Wright was not in any part of the house during these times. I have called at the house at other times, but never saw Miss Wright in the parlor, although she was elsewhere in the house at these times. I have met other friends of Mr. and Mrs. Wertz in the parlor. During the time Mrs. Wertz was sick—July 23rd to the middle of August, 1899—Mr. Wolfe came to the house at noon twice; once to bring a bottle of wine which my aunt told him to bring. I heard her tell him to do this. The other time was when Mrs. Wertz had been much worse in the morning. He came home at noon to inquire how she was. On each of these occasions Mr. Wolfe stayed but a few moments—not more than five. I went to Chevy Chase with Mrs. Wertz the 8th of August, 1899. She was so weak she could hardly walk to the car, and after reaching Chevy Chase she nearly fainted. She had not been out of the house before that day since the 23rd of July. During the times I visited Mrs. Wertz' house while she was so sick, I saw a little colored girl there once, sitting on the front porch. She was about 9 or 10 years of age.

Cross-examination :

Miss Wright rented a room at Mrs. Wertz' house. I am sure I did not see her there during the times I carried these lunches. Mrs. Wertz was then in the small hall room upstairs. She stayed in that room up to the 8th of August. After that she was down in the parlor. I never saw a physician there. At the time the wine was brought, Mrs. Wertz was in the hall room very sick. I was in the hall room when Mr. Wolfe brought the wine. He brought it to the door. The other time when he came home at noon he came to her door and spoke to her. No one else escorted Mrs. Wertz  
46 to Chevy Chase on the 8th of August, 1899, but myself.

THOMAS M. RIFFEL, a witness for complainant, testified as follows:

I have known the parties to this suit for about five years. In July or August, 1900, Mr. Wertz came to my house and asked me to use my influence with his wife to induce her to live with him, as he understood she was about to leave him. He told me he was satisfied that she hadn't done anything wrong; that she was true to him. I had a further talk with him in October, 1900. He said his suspicions had been aroused. Said Wolfe had gone to the house when he was away, and that he (Mr. Wertz) had returned late at night and found them together. I asked him if he had said anything to Wolfe about these occurrences and he replied that he had not. I told him what he should have done was to say that he didn't want his presence in the house and that he should leave there and keep away from his wife. He said he would only he had a scheme on hand which he expected to make considerable money out of—enough to fix himself—and that Mr. Wolfe had knowledge of that scheme, in that he had done some typewriting

for him. He was afraid that Wolfe would give it away. After Mrs. Wertz separated from her husband she lived with Mrs. Unger. During that time she stayed at my house over night. My daughter had a party that night. A club that she belonged to met at my house, and Mrs. Wertz was there helping Mrs. Riffel, and remained all night.

47

*Defendant's Testimony.*

Mrs. GRACE MUIRHEAD, a witness for defendant, testified as follows :

I have known the parties to this suit for about 9 years; visited their house a few times, but not often; have not seen them together more than a half dozen times.

Miss GRACE MUIRHEAD, a witness for defendant, testified as follows :

I have known the parties about nine years; was present when Dr. Middleton called to see Mrs. Wertz in July, 1899. Mrs. Wertz was lying on a couch in the parlor. I think she showed Mr. Wolfe too much preference. In conversation his opinion was taken before anybody else's. I remember on one occasion he said that everything in Washington was overestimated for one thing, when we were talking about that one time, and was upheld in that opinion by Mrs. Wertz. Mr. and Mrs. Wertz, Mr. Wolfe, and myself were present. That was some time in July, 1899, after Dr. Middleton called. Mr. Wertz was of the opinion that Washington was not overestimated, and that was my opinion, so that Mr. Wertz and myself sided together, and it struck me that Mrs. Wertz exhibited a preference in agreeing with Mr. Wolfe that Washington was overestimated. I cannot give any other instance in which Mrs. Wertz showed a preference for Mr. Wolfe. There were others, but I can't remember them. I called at the house some three or four times in July, 1899, but did not call there after the latter part of July, 1899. I called there once or twice in June, 1899.

48

ABBIE B. MICKLE, a witness for defendant, testified as follows :

Have known Mr. and Mrs. Wertz since 1893. Mrs. Wertz was sick in June or July, 1894; I attended her. She had a physician, Mrs. Dr. Richards, who called twice a day. Mr. Wertz was very kind and attentive towards his wife and wanted to do everything he could do for her.

*Cross-examination :*

Q. From whom did you hear about the trouble between Mr. and Mrs. Wertz ?

A. I saw a good deal with my own eyes. I don't know as I could lay it to any person as to who it was.

I don't know Mr. Wolfe. I had some trouble with Mrs. Wertz in 1899, and have not been friendly with her since.

Mrs. KATE LOTHROP, a witness for defendant, testified as follows:  
 I reside at Milford, Massachusetts. My maiden name was Kate McClellan. I know the parties to this suit and have known them about six or seven years. I know Karl Beckley. In response to a question stating that he (Karl Beckley) had testified that Mr. Wertz lifted his wife's dress and clothing above her knees at one time in her presence, the witness replied that "she knew nothing about it." Never saw any such action. I was at their house a great deal of the time. They lived on O street and I lived on 10th street. I cannot say what year that was. I was very intimate with Mrs. Wertz up to the year 1897, the year of my marriage. Up to that time I never saw anything out of the way. The treatment of the complainant by her husband was all right up to the time I went home. I don't know anything about the trouble.

49 Cross-examination :

I have not talked with Mrs. Wertz since I have been home on this visit. I have addressed letters to her, calling her "My own dear Nora," "My dearest Nora," and "You dear Angel." Mr. Wertz told me that Mr. Beckley testified mentioning my name. Mr. Wertz has been in my home since I have been here and talked this matter over with me. Mrs. Wertz has not, neither has she talked about her troubles to me. I wrote a letter to Mrs. Wertz dated the 5th of March, 1900, from my home in Massachusetts, which said, "You always tried to make your home a happy one, and I cannot see wherein any fault is yours," but I have heard nothing about the details of the case and have heard nothing from her, but have heard from her husband.

J. S. JORDAN, a witness for defendant, testified as follows:

I am the father of Mrs. Richardson, who has testified in this case; lived next door to Mr. and Mrs. Wertz; have frequently seen them together as neighbors; have never seen anything ungentlemanly in his treatment. I know a man by the name of Wolfe; know him when I see him. Twice when I came home I saw Mrs. Wertz and Mr. Wolfe in the house together. Once they were in the parlor talking, and the other time they were in the kitchen. It was at night, between 9 and 10 o'clock. The gas was not lighted. They were alone in the parlor.

Cross-examination :

Parlor opens into the hall and the gas was lighted in the hall. I passed through the hall, but did not go through the parlor. I passed right into the dining-room. From there I went to my bed-room, which is over the kitchen, on the second floor, some distance from the parlor. My folks were standing at the front  
 50 door when I went into the house; my wife, grand-daughter, and somebody else. My folks were on the porch—in the vestibule. The outside door was open, and one-half of the outside

door also. I didn't stop particularly; the gas light in the hall gave sufficient light so I could see who was in the parlor. My daughter, Mrs. Richardson, was standing at the door.

Redirect :

I spoke to Mrs. Wertz once about meeting Mr. Wolfe in Iowa circle. She admitted meeting him there, but claimed it was accident.

Recross-examination :

I cannot recall the conversation. I had been informed by Mr. Wertz that Mrs. Wertz had met Mr. Wolfe that night, and I asked Mrs. Wertz about it. I cannot remember the conversation. My memory is not good. I am not unfriendly to either of the parties.

ZUA M. UNGER, a witness for defendant, testified as follows :

I have known the parties to this suit about five or six years; have seen them about once a month usually. Defendant's treatment of his wife was kind, so far as I know. She lived at my house after she left Mrs. A. J. Fryer—that is, in December, 1900, and January and February, 1901. Mr. Wolfe called there to see her twice. He stayed about two and one-half hours each time. They remained in the back parlor during these visits, with the doors closed. During these months Mrs. Wertz remained away from her room one night. She was out late frequently; where she was I do not know; as late as 10 and half past ten o'clock.

51 IDA J. FRYER, a witness for defendant, testified as follows :

Have known the parties to this suit about four years. I was a neighbor of theirs for about two years, something like three or four years ago. I saw them together frequently when I lived next door to them. I never heard Mr. Wertz speak a cross word to his wife while I lived as a neighbor to them. She treated him nicely at that time. I know Mrs. Wertz was seeking evidence for divorce, but of course I had nothing to do with the case, only to listen to what she told me. I do not know Mr. Wolfe.

Cross-examination :

I said I did not know anything about the case except what I heard from Mrs. Wertz. She was making complaint to me. She told me she was thinking of getting a divorce, or should have one. I do not wish to answer what the grounds for divorce were which she stated to me. I was last a neighbor of Mr. and Mrs. Wertz about 4 years ago; moved from that neighborhood in 1898.

JOHN W. PALMER, a witness for defendant, testified as follows :

From July 1st, 1892, to September 30, 1894, I rented a house, No. 922 N street, and Mr. and Mrs. Wertz resided with me. I saw them most every evening. In my opinion, I never saw a man treat a wife any better than he did. She was sick there at one time about five or six weeks. Miss Godfrey was with her during her illness.

W. PORTER COX, a witness for defendant, testified as follows:  
52 Knows Mr. and Mrs. Wertz, parties to this suit; has called there frequently; knows Mr. Wolfe; remembers the trip to Analostan island on May 30, 1899.

I left home—my house—in the morning, and proposed the trip that we go down to Analostan island, the day being a holiday, and those that were in the party were Mr. and Mrs. Wertz, Mr. Wolfe, Mr. Beckley, and myself. We left 1210 O St. N. W. about ten o'clock. We then proceeded down to the Cumberland boat-house, at 32nd street, and secured a boat. We were some little time getting the boat ready and out of the boat-house. We were over at Analostan island about a quarter past eleven. We then proceeded to what is known as Virginia channel, and looked around there till we found a suitable rock, and we tied the boat, and all got our fishing lines out and proceeded to fish. Mrs. Wertz and Mr. Wolfe said they did not care to fish and would go some distance from us and remain there while we fished. We remained at that place for some time, and then we moved around on the other side of the island, as the tide was going out very fast, but before going we went out to see if we could find them. Being unable to do so, we left a note on a stick, telling them that we had gone around to the end of the island. In case they returned before we came back, we wanted to let them know just our exact position on the island. We fished there again for a little time, I couldn't just give the exact time, and then we went back, after calling them to our first place of landing, Virginia channel, and the notice was still on the stick as we left it, showing that Mrs. Wertz and Mr. Wolfe had not been there during our absence. We went out and called them again, or rather we went hunting about there within 150 and 200 feet. The underbrush and trees were very thick and some portions right swampy. We hollered for them a while, endeavoring to locate them, but were unsuccessful. We also went to the other end of the island to

53 the ruins—I have forgotten the name of the house that we explored—went through the various chambers there and then returned by the west side of the island, but were still unable to locate them. We fished some more, and Mr. Beckley and myself left Mr. Wertz fishing while we went over to Georgetown to get some water. We purchased a two-gallon water can and then got some pickles and olives and then proceeded to the ice-house. We filled the can with water and ice and then on Water street purchased some cakes; then went back to the island. We made another search for them; not finding them, we then all had lunch—Mr. Beckley, Mr. Wertz, and myself.

I do not know where Mr. Wolfe and Mrs. Wertz were. We ate, I think, two-thirds of the lunch on hand; then we walked around on the island, picking wild strawberries. Still we found nothing of them. It was late in the evening when they came up from around on the Virginia channel from the north end of the island, where we fished from a very large rock. Mr. Wertz asked his wife where they had been. She said they had been reading back a very short



distance from where we landed that morning. Then there was some conversation between them as to whether it was right or wrong for her being out that length of time. We opened the lunch basket again and finished up the lunch.

I don't remember just exactly as to the basket, or whether it was in a basket. We carried lunch in addition to the amount we purchased over in Georgetown. We told them about the old house and the ruins and we all went down to look at them before we left the island. We returned to where the boat was anchored under a very large tree at the north end of the island, and rowed across to Georgetown to deliver the boat to the owner. We were separated between 4 and 5 hours.

Cross-examination :

54 I met Mr. and Mrs. Wertz in 1894 or 1895. I called there frequently. I have found other young men there both when Mr. Wertz was at home and when he was not at home. I myself have called several times when he was not at home; have also found Mr. Wolfe in the parlor when I called there. I found him there twice. Sometimes when I called I saw Mrs. Wertz alone. She mentioned to me once that Mr. Wertz was jealous of me, and of other young men, a Mr. Unger. She said he was also jealous of her brother. Mr. Wertz never objected to my calling there; in fact, both of them made me welcome. When I saw Mr. Wolfe in the parlor it was just a social call. I never saw anything between Mrs. Wertz and Mr. Wolfe that was unusual. I never saw anything between Mr. Wertz and Mr. Wolfe that indicated they were not friends. I saw Mr. Wertz and Mr. Wolfe together after this Analostan incident and did not see anything between them.

FRANK E. ELDER, a witness for defendant, testified as follows :

Have known the parties to this suit since November, 1897; was at their house three or four times a week. Mr. Wertz always treated his wife very kindly; was very affectionate and very considerate of her welfare and feelings. I never saw anything that I would consider indecent or cruel. I know Mr. Wolfe. When I first met him there I did not notice anything wrong, but later on I would have thought that he was her husband if I had not known which was, from the way she treated him. She always sided with him.

Counsel for the plaintiff moves to strike out this answer as a conclusion of the witness.

Cross-examination :

55 A cousin of Mrs. Wertz gave me a letter of introduction to them. I ceased to visit them not later than April or May, 1899. In the summer of 1899 I remember calling there when Mrs. Wertz was sick in the bed-room at the head of the stairs, 2nd floor. I believe that was in the fall of 1898. I have escorted



Mrs. Wertz home from choir rehearsal alone. I have seen Mrs. Wertz at the house when Mr. Wertz was not there. I corresponded with Mrs. Wertz. I presume that Mr. Wertz knew I did so, but I did not tell him. I cannot remember of anything that Mrs. Wertz said to Mr. Wolfe that was out of the way, except that she sided with him in little controversies—social problems. I do not recall just what they were. I have seen her just from a little argument fly up and get mad at her husband, shake her fist in his face, and tell him he knew he was lying. She has told him he ought to be ashamed to take a position against her in argument. Upon one occasion we had gone home from church and were discussing the sermon. Dr. Strickland said when he saw the chain-gang go by, "But for the grace of God, there goes Strickland." We were discussing that. She said it wasn't so; that he shouldn't have said it. Mr. Wertz and I both took the position that he was justified. Finally she made the assertion that the worst woman living was too good for the best man. Mr. Wertz told her she knew that was not so. Then she said, "Now, Mell, you know that is a lie. You know I do believe it." That is the worst thing I have ever heard her say. I had a dispute with Mrs. Wertz and have not been friendly towards her since. I have not spoken to her for three or four months. I ceased calling there before I heard the rumors, and have not called since I heard them.

56        JOSEPHINE STUCHELL, a witness for defendant, testified as follows :

I lived at 920 N street part of the time between March, 1894, and 1896; Mr. and Mrs. Wertz were living there at that time. I know nothing but what was good of both of them. I thought he was the best husband I ever saw.

Mrs. IDA J. FRYER recalled :

Before I knew Lizzie Parker was to be a witness, when Mrs. Wertz was staying with me, I asked her as to the truth about Mr. Wertz treating Mrs. Wertz with cruelty. I asked her if she ever saw Mr. Wertz slap Mrs. Wertz. She said, No, sir. She also told me that she saw Mr. Wolfe sitting on Mrs. Wertz' bed when Mrs. Wertz was in bed. Mrs. Wertz told me she took some apples to Mr. Wolfe that she brought with her from Ohio.

Cross-examination :

I was at the hospital when Mrs. Wertz was living at my house. She stayed one month after I came back. I was friendly with Mrs. Wertz after that. We went to the theater together, and she has called at my house frequently, and I was at her house a short time before I went on the witness stand before. My daughter and I went to her house about half past four and stayed until 7.30. This was after Mr. Wolfe called on Mrs. Wertz at my house. This call that my daughter and I made was within a few days of my testifying in this case. I was not subpoenaed in this case as a witness.

*Subpoenaed*

OWEN P. KELLAR, a witness for defendant, testified as follows :

I am a clerk in the Treasury Department and have known the parties to this suit about 8 or 10 years. Myself and wife  
57 have been at their house and they have been at ours. I always saw him treat her well ; never anything else.

Cross-examination :

I did not visit their house in June, July, or August, 1899. In the latter part of 1899 I heard of their domestic difficulties, and the complaints were made by Mrs. Wertz against her husband.

EBENEZER ELLIS, a witness for defendant, testified as follows :

I knew Mr. Wertz before he was married, and then I knew Mrs. Wertz, some time after their marriage in 1890. I saw them quite frequently at church and at their home. His treatment of her as I saw it was very kind. I know Mr. Wolfe. I saw a very tender regard on the part of Mr. Wolfe, but do not know that you could call it fondness. I was there one evening when she was sick. He was standing near her. She was lying on the couch in the parlor, and he was fanning her with more tender regard than I thought ought to be under the circumstances. Mr. Wertz was not there.

Cross-examination :

I inquired for Mr. Wertz and was informed that Mrs. Wertz was sick and that Mr. Wertz had gone out on business. This was in 1899, just before the month of August, about half past seven in the evening. I stayed there an hour or so. Mr. Wolfe was there all the time. During that summer I met Mr. Wolfe, Mr. Cox, and Mrs. Richardson, and some of her friends. I do not know Miss Wright, but have seen her pass through the hall. I have never witnessed any quarrels between Mr. Wertz and Mr. Wolfe ; never called more than once or twice when Mr. Wertz was not there, during that summer, and during none of my visits did I hear or see any dispute between Mr. Wertz and Mr. Wolfe.  
58

JOHN C. ATHEY, a witness for defendant, testified as follows :

I have seen Mr. Wolfe on several occasions, but do not believe I would know him if I would see him now. I was with my wife on two occasions to Chevy Chase lake during the summer of last year, or the year before. I saw Mrs. Wertz there on one of these occasions. She introduced Mr. Wolfe to Mrs. Athey and myself. The other time she was sitting with a gentleman, with their backs towards us, and I could not tell who the gentleman was. I could not say whether it was June, July, August, or September. I cannot recollect any of the conversation except she was very pleasant and introduced Mr. Wolfe to us. I do not know where Mr. Wertz was. On the occasion when I saw a gentleman with Mrs. Wertz with their backs towards us I could not say whether it was Mr. Wertz or not.

## Cross-examination :

After the trouble between Mr. and Mrs. Wertz, I spoke to him about these occurrences I have mentioned. Mr. Wertz told me that everything was not all right between Mrs. Wertz and Mr. Wolfe, and that there were proceedings on hand with reference to a divorce; that there was trouble between himself and wife on account of Mr. Wolfe. He made insinuations against his wife as to her moral character and conduct with Mr. Wolfe. These insinuations did affect my opinion regarding Mrs. Wertz, which, of course, should be changed by evidence to the contrary. I have known Mrs. Wertz about seven years, and prior to this conversation with her husband I had never heard anything or known of anything derogatory to her moral character, nor had I ever heard of anything derogatory to her reputation for chastity in the community in which she lived. Her reputation  
59 previous to that time in the community had been good, so far as my knowledge goes. I have had several conversations on this subject with Mr. Wertz. Once Mr. Wertz told me that Mrs. Wertz was suing for a divorce and for alimony, and he also told me that he had to pay so much a month alimony, and he was anxious to stop this payment of alimony, but he didn't object to a divorce, but he did to the alimony. He made insinuations during these conversations against Mrs. Wertz' moral character, or statements which I think were open to that construction, and I so construed them. I have heard Mr. Wertz speak of other parties to whom he made like insinuations; one of these was Miss Emma J. Wright.

W. F. BASIM, a witness for defendant, testified as follows :

I have known the parties about 10 years. Up until some two years ago my wife and I used to visit them quite frequently. Since then we have not seen much of them. All that I ever saw of Mr. Wertz' treatment towards his wife was kind. I have heard her call him down when he was telling a story and say let her tell it because he was not telling it right.

## Cross-examination :

I cannot remember the things Mrs. Wertz asked her husband to let her tell because he was not telling them right, nor the time, nor the occurrence, nor the year. I never stayed at their house all night, nor to breakfast; have been there to dinner, and there Sunday nights after church. I have never witnessed a domestic difficulty between any of my friends or acquaintances, and do not know whether or not Mr. and Mrs. Wertz got along well together when company or friends were not present. I have not called there since June, 1899. Mr. Wolfe was living there then, but I  
60 was never told of any difficulty between Mr. Wertz and Mr. Wolfe nor between Mr. and Mrs. Wertz about anything that happened on the 30th of May.

61       EMMA J. WRIGHT, a witness produced by defendant, testified as follows:

I am a dressmaker, 56 years of age; have known the parties to this suit seven years; know Mr. Wolfe; have lived in the house with Mr. and Mrs. Wertz six years and a half, at 920 N street, from October 1st, 1894, and moved with them to 1210 O street and remained until April 1st, 1900; lived with them as one of the family. Mr. Wertz was kind, generous, and affectionate towards his wife. Mrs. Wertz was on very intimate terms with Mr. Wolfe. Never saw Mr. Wertz act indecently towards his wife. While she was sick in 1899 she had a little colored girl who, with Mr. Wolfe, attended her quite a good deal; I did all I could for her; sometimes fixed her meals for her. I do not know what was the matter with her; think she was nervous and hysterical; do not think she was in bed all day at any time when she was sick; she did not get up until after noon and would lie on the couch in the parlor. Mr. Wolfe attended her morning and evening and very often came home at noon. Mr. Wertz was mostly in the house when Mr. Wolfe waited on his wife during her last illness. Mrs. Wertz' attitude towards Mr. Wertz was usually kind; she had quite a temper; up to the time Mr. Wolfe came into the house she was a very good wife; after Mr. Wolfe came she did not treat her husband very nicely; I think she treated Mr. Wolfe the best. When she was sick in the summer of 1899, on one occasion I was in the room with her, she was lying on the bed; Mr. Wertz came to the bed and she struck him in the face, pulled his hair, and kicked him; she said he couldn't sleep there and I asked him to sleep on the couch; he said he wouldn't unless I promised to stay all night; I stayed until half past one o'clock (the next morning); Mr. Wertz was asleep on the couch in the sitting-room and Mrs. Wertz was asleep in the bed when I went to my room at half past one; I was there all of this time, sitting on the side of the bed with Mrs. Wertz. I went to

62       my room, but did not undress, and about daylight Mr. Wertz came and called me; I asked him what was the matter and he said Mrs. Wertz was very nervous and would not let him do anything for her; I asked the cause and he said he had locked the door into the hall and Mrs. Wertz had taken another key and unlocked it. (Objected to as hearsay.) I then went over to Mrs. Wertz' room and found her suffering from nervous hysteria. Mr. Wertz then laid down on the couch and got to sleep again and Mr. Wolfe came over and sat down on the opposite side of the bed from me. I awakened Mr. Wertz and he came to the door and sarcastically asked Mrs. Wertz to give Mr. Wolfe a pillow. Mr. Wertz said he had locked the door because it was to be kept locked, and he intended it should be locked until she was up, as he objected to Mr. Wolfe going in that door (meaning the door from the hall) into Mrs. Wertz' bedroom. I went downstairs and prepared Mr. Wertz' breakfast and then I went upstairs through Mr. Wolfe's room and saw Mrs. Wertz sitting up in bed and Mr. Wolfe sitting beside her. They did not see me and I went back to my room and stayed there until

Mr. Wertz came upstairs. Mrs. Wertz told me Mr. Wolfe had been in her room the night in question when her husband locked the door. I saw Mr. Wolfe in Mrs. Wertz' bed-room quite a number of times, twice when he came home at noon. He usually went up in her room and sat on her bed during her illness. Once I saw Mrs. Wertz in her gown in the parlor and Mr. Wolfe had just gone out the door; that was about half past seven in the morning. Once she told me she was going out car-riding as soon as Mr. Wertz went away, but not to tell him. On the 3rd of June when I went to bed I came down the front stairs and Mrs. Wertz and Mr. Wolfe were in the parlor. She told me the next day they stayed there until half past one. They were often at night alone in the hammock. I have heard them come in as late as half past one. On one of these occasions I heard Mr. Wertz ask his wife to come in and she told him to mind his own business. She stayed out once all night, in

63 July, 1901. She came in and sat on my bed a while and said she had been ordered to bed like a kid and she wasn't going. Mr. Wolfe was out on the porch that evening. I went out there and sat in a rocker. I went to bed and left Mrs. Wertz in the hammock and Mr. Wolfe on the porch about as far as across this room from her. I went to bed about 11 or 12 o'clock. Mr. Wertz had gone to bed; he went over in the front part of the house some time before that. This hammock is on the back porch upstairs. Mr. Wertz went to bed that night some time before midnight. I know she stayed out all night, because I heard her get up and go down in the morning. Mrs. Wertz arranged with Mrs. Richardson about bringing her meals during the time she was ill. Mr. Wertz and Mr. Wolfe quarreled. Mr. Wertz objected to Mr. Wolfe's attention to his wife.

NOTE.—All statements with reference to Mr. Wolfe and his conduct objected to on the ground that such matters were stricken out of the answer.

When Mrs. Wertz was away she enclosed a letter to me for Mr. Wolfe. I have destroyed the letter, as she asked me to do so. In another letter to me she said she was coming home, but not to tell her husband. Mr. Wolfe was at the house at that time. She wrote me another letter, which I have destroyed, and said she was coming back, but would not come back except to get some things in the house. When she came back she said she had come to get all the money out of him she could and she meant to get a divorce. I was in the house when Mr. Wolfe left there. I received a letter from her about Mr. Wolfe being requested by her husband to leave the house, which I have destroyed. She said Mr. Wertz would regret it as long as he lived. Mr. and Mrs. Wertz occupied separate bedrooms after they came from Ohio. She told me she would not occupy the same room. I know this was not with Mr. Wertz' consent.

## Cross-examination :

I moved from 1210 O street March 31st, 1900. My business of dressmaking called me away from the house early in the morning. I left about 7.30, sometimes earlier, and returned in the evening from half past six to seven—sometimes later. I left the city the 4th of August, 1899, and did not come back until about the middle of September; was out of the city during that time. During the month of July and up to the 4th of August, 1899, I was engaged in my business and going out, as I have told, except two days and two half days; these times I went out part of the time and came home; except for that I was out during that time. The room I occupied at 1212 O street was in the back part of the house and reached by a separate stairway; the main stairway was in the front part of the house—came up between the two front rooms occupied by Mr. and Mrs. Wertz and Mr. Wolfe's room; there was a landing at the head of the steps at Mr. Wolfe's room door; the bath-room came next to the sitting-room and then there was a hall room. When I was out sewing I took my meals where I sewed. I saw a little colored girl three times there; she came at nine o'clock in the morning and stayed about an hour. The night Mrs. Wertz was sick in bed and pulled Mr. Wertz' hair was the first night of August; the next morning is the morning Mr. Wertz came for me; he was dressed in his night clothes. I did not know what had happened, but I was told by Mr. Wertz. The night I sat up until half past one with Mrs. Wertz was the first of August. I had been in the room all the day; no, she had been downstairs all the day and so had I. I went into the room that night about nine or ten o'clock. Mr. Wertz' couch was in the sitting-room, which was the large room, and Mrs. Wertz' bed was in the small room; her bed was a double bed; you could open the door from the hall without moving the bed; the room is about eleven or twelve feet long and is just the width of the bed—about six feet; the bed sat crosswise in the room; there was a door leading in from the hall and one leading in from the sitting-room, which was Mr. Wertz' room; that door leading from his room was open; so was the one into the hall; the house was open; Mr. Wertz was lying on the couch in his room, probably five feet away from the door between his room and his wife's room; Mr. Wertz got ready to go to bed about 11 o'clock that night; he told me Mr. Wolfe was in the room the night before and he did not want to leave Mrs. Wertz alone, though he was only five feet away. Both Mr. and Mrs. Wertz were undressed. I was not undressed, and was there as a sort of guardian angel. The time she kicked her husband, that night, the doctor said she was run down and needed cheerfulness and rest. She told her husband when he layed down on the bed that she did not want him to lie down, but he persisted in it unless I promised to stay all night. When I came to Mrs. Wertz' room early that morning she was hysterical. I did not see what happened between half past one and the time in the morning I was called. I do not know whether Mrs. Richardson was there every morning and afternoon all the time

Mrs. Wertz was sick. I saw her there sometimes, but not every day. She sent in her meals sometimes, so Mrs. Wertz told me. I was not there when Mrs. Richardson attended her. Mr. Wolfe's attention to Mrs. Wertz during her sickness was to bring her up wine and groceries and comb her hair and bring in water for her to wash, while Mr. Wertz was at the same time in his room. He was not saying anything to Mr. Wolfe about it when I saw him. He told his wife he would attend to her wants. During the time his wife was sick in July and August Mr. Wertz was at home every night. Sometimes he went out early and came back early. Sometimes he went out at 11 o'clock and came back at 12 or 1 o'clock. He left Mr. Wolfe there. He used to be in the sitting-room by himself when he was home and Mrs. Wertz would be in the hammock on the porch, although I have heard him invite her in as many as eight or ten times. The gown Mrs. Wertz' mother sent her was something like a night dress which she sometimes wore. Mr. Wolfe came there the 30th of April. The night of the 3rd of June spoken of, Mr. Wertz was home, but had gone to bed. I saw Mrs. Wertz and Mr. Wolfe together after 12 o'clock. I was going to bed, but had not been down in the parlor with them; had been sewing in the sitting-room, Mr. Wertz' room. The couch was  
66 in there; he had been out that night, but was in bed in the little room; I was in the next room sewing for Mrs. Wertz; I came down the front stairs, looked in the parlor, then went up the back stairs to my room, I spoke to Mrs. Wertz, they were sitting in the bay window, but I did not see them doing anything wrong. The night Mrs. Wertz spent in the hammock was not during the month of August after I had left the city. Mr. Wertz explained to me that he did not require Mr. Wolfe to leave the house because he said Mrs. Wertz was in such a nervous condition that out of regard for her he would not; that if it wasn't for that he would have kicked him out. Mr. Wertz never quarreled with Mr. Wolfe; I never heard him make any objections to Mr. Wolfe's attentions to his wife; I heard him make objections to his wife when Mr. Wolfe was not present. I do not know why he should object to his attentions and still allow him to room in his house; think he was a big fool to do it; I regarded him as a big fool and would have liked to do it for him. Mr. Wolfe is younger than Mr. Wertz. I did not see the comfort incident; I only heard Mr. Wolfe get the comfort; Mr. Wertz was at home that night; Mrs. Wertz said she had a chill; I did not see it; I am only telling what Mrs. Wertz told me. Mrs. Wertz claimed that her husband treated her unkindly during that summer; I do not think she gave me any details, none that I remember, nor do I remember any incidents; I only remember those that made an impression on my mind at the time; those in reference to Mr. Wolfe. I couldn't tell what she said about her husband's cruel treatment; I suppose I could call it to remembrance if it is necessary; I don't remember any instances; she was always saying he did not treat her well, but I never saw any instance where he did not. I was friendly with Mr. Wertz, but he was very little in my room



did not come into my room undressed and get into bed with me; I did not tell Mrs. Wertz that he had done so. When Mr. Wertz was away I sent him a note concerning Sunday-school papers. I had a conversation with Mrs. Wertz about the 13th  
 67 of November, 1899, of circumstances that occurred when she was away in Philadelphia, but I never stated anything in regard to myself and Mr. Wertz that was in any way wrong at any time. Asked what I mean by wrong, I think I am capable of judging what is right and what is wrong. I did not injudiciously tell Mrs. Wertz anything. I never so wrote to Mrs. Wertz' father, Mr. Beckley, nor did I write to Mr. Beckley that I had unwisely told her something. I did not write just that (that Nora was using something I very unwisely told her). I never told her anything that would in any way reflect upon myself. I decline to say what it was that I wrote about, what I had unwisely told her, because there was nothing I told her that had in any way reflected upon me. I sent the letter marked "E. J. W. # 3" to Mrs. Wertz' father (which is as follows):

WASHINGTON, D. C., *July 31st.*

Mr. Beckley.

DEAR SIR: I beg pardon for troubling you as I know you have enough already but I think it is due Mell as well as myself that I make a statement to you. I understand that Nora is using something that I very unwisely told her as capital to get a separation—I want to tell you that so far as I am concerned Mell has been true and loyal to Nora and has done no wrong I have the blessed consciousness that there was no wrong and can stand before any tribunal of God or man and testify to my innocence and of no wrong—of Mells and this I will do at any time or place. I had no thought of wronging Mell and do not want his moral character to suffer or a separation be brought about through any act of mine—is there anything right in I being made the medium to separate them and the man who caused the trouble travel calmly on. I have lived to be old enough to be a mother to both these children and they have always been as children to me and to have this brought against me by the child I had loved so well if she had been mine I could not have loved her more—and have always tried to be  
 68 kind and good to her—and to do all I could to help her in any way and I would have stood by her in all her trouble and helped her if she would have let me but she refused my friendship—said I could not be her friend and Mells—he had always been good and kind to me and there was no reason why I should not treat him right—I did wrong in not going away last June when the trouble first began I was going but Nora seemed to want me to stay and I thought it would soon be all right and I tried so hard not to become involved in it and while I have been hurt and troubled and anxious through it all yet nothing has hurt me like this that my once dear little Nora Darling should become the worst enemy I ever had I do not think she has been hardly responsible



for her actions for the last year—I think her nervous system is in such a state that her mind sees with distorted vision—what I cannot understand is why, what she claims is right for her—she condemns as wrong in others—but I must have an understanding—I have retribution but I do not want to hurt Nora in any way it is not my desire to return evil for evil—but I must have an understanding—I know that down in the depth of her heart she knows she wrongs me and if I have ever prayed earnestly for any one I have today and every day that she will do right—May God help her to see the wrong she is doing—if you have anything to say to me or any suggestion to make address

EMMA WRIGHT,  
1306 S Street N. W.,  
Washington, D. C.

I wrote to Mr. Wertz on the 20th of August requesting him to see about shipping some furniture for me. I was at 1210 O street from September 30th, 1899 until just previous to the November election, while Mr. Wertz was there and after Mr. Wolfe had left on the 30th of September, Mrs. Wertz at that time was away and had been since the 15th of August. I did not tell Mr. Wolfe about the first of August that Mr. Wertz had said something I was afraid he would be sorry for, nor did I tell Mr. Wolfe that Mr. Wertz had told his wife he did not care if she never got well but Mrs. Wertz told me that was what Mr. Wertz said, although I did not tell that to Mr. Wolfe. I know that Mr. Wolfe had done typewriting for Mr. Wertz, having heard Mr. Wertz say so that summer, Mrs. Wertz was taken sick during the day of July 23, 1899.

Mrs. Wertz has shown temper to Mrs. Wertz prior to the eleventh day of October, 1899, in fact they both lost their tempers. I wrote to Mr. Wertz on the 20th of October, 1899 "Let me know when you are coming home. Am sorry you and your girlie haven't made up, but guess you will soon; I hope so. Don't be too hard on her and don't lose your temper" (Letter offered in evidence). This letter was written after Mr. Wolfe had attended Mrs. Wertz and after Mr. Wolfe had left 1210 O street, in fact it was written after all the occurrences that happened in June, July and August, 1899 but I did not say anything about these things in the letter because I did not think it was necessary, nor did I speak about any difficulty with Mr. Wolfe in the letter. When I wrote that letter to Mr. Wertz Mrs. Wertz was in Ohio and did not return until November 11th 1899, then I had a talk with her in which I asked her opinion about what she thought about me and Mr. Wertz, because she had made a good many insinuations and it became necessary to have a general talk, she said she would not judge me and I told her I would not judge her, she said I could not be a friend of hers and a friend of her husband's. I did not tell her of any attempted assault on me by her husband but I wrote to her mother on the 17th of November that I was a friend of Mrs. Wertz and she could trust

me, but I am not a friend of hers now, Mrs. Wertz herself changed our friendship, I have not said that Mrs. Wertz has done me any injury, I do not know whether she has or not, but she has tried, I refer to things she has told to a number of people when I was not present, though I did not hear her tell anything.

When I moved away from Mrs. Wertz' I moved to 1306 S street and rented from Miss Lula Graham, went there about April 70 1st, and remained until February, 1901. Mr. Wertz never called to see me at all, he came a few times on business, stayed fifteen minutes, sometimes half an hour, said very little about this case. Miss Graham did not speak to me about not having Mr. Wertz come there, nor did she tell me in effect that his visits were too frequent and that they must cease, I did not say to Miss Graham that after a gentleman came there to live with his wife that I thought Mr. Wertz might be allowed to call on me, nor did Miss Graham after that persist in declining to let Mr. Wertz call, nor did I ever know of any objection on the part of Miss Graham to Mr. Wertz calling on me. I am now living at #417 First street and Mr. Wertz has called there to see me to bring the order to come down here, and other times when there were meetings to be held, he stayed only a few minutes once in the daytime, the other times in the evening stayed about half an hour. I do not know how he knew what I was going to say in this case, he called me as a witness I suppose without knowing what I was going to say.

When I lived with Mrs. Wertz I did not spend the evenings in the parlor, but in the sitting-room because they had young company, Mr. Wolfe used the parlor but I never knew of the arrangement. When Mrs. Wertz was sick in the summer Mr. Wertz used to go out at nights, I do not know why he did not stay home with his wife, he had business to attend to I suppose and as his wife refused his attentions I suppose he wanted to attend to his business. I do not see any variance between the statement that Mr. Wertz went out at night staying as late as 12 or 1 o'clock, and his getting me to stay with his wife for fear Mr. Wolfe would come in although he himself was in the next room, nor do I see any inconsistency in these facts, nor do I think Mrs. Wertz required my protection more when Mr. Wertz was away than when he was there. When Mr. Wolfe came home twice at noon during Mrs. Wertz' sickness I was upstairs in the sitting-room, in Mr. Wertz' room where he slept, I came in and found Mr. Wolfe reading the paper to Mrs. Wertz, or she 71 was reading the paper to him.

When I found Mr. Wolfe sitting on Mrs. Wertz' bed (as I have spoken of in examination-in-chief), Mr. W—— probably stayed a minute or two. Neither Mr. Wolfe nor Mr. Wertz stayed out all night during the summer of 1899, so that until I left for my home in August Mr. Wertz, Mr. Wolfe, Mrs. Wertz and myself were there every night. On the fourth of August when I went away Mr. Wertz was eating while Mr. Wolfe was upstairs, in Mrs. Wertz' room, I could not tell why he let Mr. Wolfe stay upstairs with his wife. On the night of August 1st when Mr. and Mrs. Wertz were

both undressed and I was in the room I was there when Mr. Wertz came to bed, Mr. Wertz was not hurt but his wife kicked him, this was about 11 or 12 o'clock at night. The time in my direct examination where I say that some one was in the hammock until half past one, Mr. Wertz had been home early in the evening. I do not know whether he was out there or not; I was not out there; Mr. Wertz was out as late as half past one that night, I remember that very well; it was some time in July. I heard Mr. Wertz come in about half past one just after the parties who were out on the porch had come in. I do not know whether Mr. and Mrs. Wertz were on friendly terms then or not, but this was while Mr. Wertz and Mr. Wolfe were on friendly terms and while Mr. Wertz knew that Mrs. Wertz and Mr. Wolfe were on friendly terms, that he stayed out until half past one on business he said. He was out on business that summer about two or three times a week, coming home at 12 or 1 o'clock while Mrs. Wertz and Mr. Wolfe were friendly, but during all these difficulties and disturbances *ances* I never heard of any difficulty between Mr. Wertz and Mr. Wolfe.

I have read my testimony since I was cross-examined the other day. Mr. Wertz told me I should do so, at church on Sunday. I did not continue watching Mr. Wolfe and Mrs. Wertz after I left the city in August, nor did Mr. Wertz ask me not to go away, but  
 72 stay and watch Mr. Wolfe. I was only asked to watch them one night, nor do I know that the reason for watching had ceased.

#### Redirect examination :

Mr. Werts is 36 years old and Mrs. Wertz is 33 years old. When I wrote the letter saying, "Am sorry you and your girlie have not made up," I meant Mrs. Wertz, and was trying to keep them reconciled. I do not know whether Mr. Wertz knew that Mr. Wolfe was upstairs when he was at breakfast the morning I went away. I never said very much one way or the other. I did not want to make any trouble.

There was no transom over Mr. Wolfe's door, nor could a person in Mr. Wolfe's room, with the door closed, hear a conversation occurring in Mr. and Mrs. Wertz' room. There was a transom over the hall door of Mr. and Mrs. Wertz' room.

The following paper is shown the witness, and she identifies it as the handwriting of Mrs. Wertz (Defendant's Exhibit # 2): "I could never stay where I had once been suspected. Hope God will forgive you for the great wrong you have done me." (Objected to as not sufficiently proven.)

#### Recross-examination :

I never went into the room Mr. Wolfe occupied and closed the door, and had some person go into the room Mr. and Mrs. L. Wertz occupied and close the door and listen to see whether you could hear a conversation or not. That summer was a hot summer and the doors were open, though I do not think they were at night.

After this witness had been discharged and after the deposition (hereinafter mentioned) of Louise Graham had commenced, the examination of Miss Graham was interrupted, and the said EMMA J. WRIGHT (over the objection of counsel for the complainant) was recalled by the defendant to correct her testimony and stated :

73 I wish to correct the testimony I gave in regard to a statement about Miss Lula Graham. Upon reflection, I find that Miss Graham asked me to tell Mr. Wertz not to come to the house any more, as there were no other ladies in the house and she didn't like gentlemen coming, and also the people who lived in the house were there only a short while while I was there. I spoke to Miss Lula and asked when Mr. Loehler would be there if there would be any objection. I came here today because you (meaning Mr. Lipscomb) told me it was my duty.

Cross-examination :

I spoke to Mr. Lipscomb just now ; I called at his office this morning ; Mr. Wertz was there when I go- there ; I saw Mr. Wertz yesterday evening at my home. I asked him what I should do, and he told me to go to Mr. Lipscomb, which I did. I talked about the testimony. I heard you say yesterday you did not want somebody interviewed, but I did not understand Miss Graham was summoned. I did not know she had been summoned until I saw her here and supposed so. The testimony today is taken in another room from that where it was taken yesterday ; this room I have never been in before today. Mr. Lipscomb and Mr. Wertz came in this room before I did, but I heard you tell Mr. Lipscomb you had a witness in the back room, and Mr. Lipscomb called me in afterwards and then I saw the witness, Miss Graham. Then it was Mr. Lipscomb called me to the witness stand.

74

*Testimony in Rebuttal.*

LOUISA GRAHAM lives at 1306 S street and lived there on the first of April, 1900 ; became acquainted with Emma J. Wright, who occupied a room in my house from April 1st, 1900, to February, 1901. I have seen the defendant before at my house when he called to see Miss Wright in the summer of 1900. I did not keep any account of the number of calls, but it was as many as five times he saw her in her room ; the first time he called she occupied the back parlor, and the other times she was on the second floor. I had a conversation with Miss Wright and asked her to ask Mr. Wertz the next time he called not to come any more. I did not think it would look right for him to be calling when there were only three ladies in the house. Respecting Mr. Loehler, they were rooming with me, but were away, and Miss Wright said when he came back she thought it would be all right, that it would not look bad if there were gentlemen in the house. In reply to this I told her Mr. Loehler would not like it. Mr. Wertz never called after that ; the Loehlers came back the 30th

of December, 1900; the conversation I had with Miss Wright was before they came back; I do not remember just how long before.

Cross-examination:

I am 53 years of age, and I suppose Miss Wright is about 55; in my opinion, she is not a very attractive woman; she is a dressmaker, but did not work in her room; she worked out during the day; she only did her own sewing at my house. Mr. Wertz only brought one bundle to the house; what it was I do not know.

75 THOMAS H. MARTIN, a witness produced by complainant, testified as follows:

I have resided in the District of Columbia thirty-seven years. I am the husband of Mrs. N. J. Martin, who has testified in this case.

I know Mr. and Mrs. M. A. Wertz; have known them ten or eleven years.

Mrs. Wertz called at my house frequently during the months of September, October, and November, 1900. I rarely saw her there except in the evening; she visited the house, I can safely say, on an average of two or three times a week; she came alone. The time of her departure varied; sometimes she would leave at probably half past nine or ten o'clock; at other times, I remember at least one occasion when she left the house at between eleven and twelve o'clock at night. I accompanied her home, no one else going with us.

Afterwards when Mrs. Wertz moved to Mrs. Unger's during the latter part of November, December, January, and February, she called quite frequently, practically the same as before, and remained about the same time before leaving.

When she was living at Mrs. Unger's house and came to our house and stayed until the late hours mentioned I accompanied her home on every occasion except one; that time I took her to 13th and U street and put her on a U Street car; we were alone, so far as my recollection serves me, when I took her to the U Street car; when I went home with her to Mrs. Unger's she was alone; we were as a rule.

Mrs. Wertz never came to our house with Mr. Wolfe. As a matter of acquaintance, I do not know Mr. Wolfe; I think I know the gentleman by sight. Mr. Wolfe has never been to my house.

Prior to the month of September, 1900, Mrs. Wertz called to see the folks at our house

76 When Mrs. Wertz' trouble began she seemed to be in a very highly nervous condition. I saw her a number of times when she appeared so. I remember on one occasion, when she expressed herself as being very fearful as to returning home, she stated that Mr. Wertz had treated her badly; that he had treated her very severely, cruelly, and unkindly, and she was very apprehensive as to whether she should return home, for fear he might do her bodily harm; she seemed to be very nervous, very timid about going home, and as to what might happen; she seemed very anxious. She had come from home to our house. (Objected to.)

I have heard complaints made by Mrs. Wertz about her husband to my wife.

In regard to Mrs. Wertz' condition mentally and physically, I am only prepared to answer that immediately preceding the time when it came to my knowledge she was in trouble she seemed to be unusually nervous. Her condition at these times was not normal; she was in a more nervous and excitable condition than was natural for her.

I have been a member of Hamline church for thirty-six years; have held official positions in the church. Mrs. Wertz is a member of Hamline church. Her reputation in that community and that church, in reference to good character, so far as my knowledge goes, there is none better. I have never heard her reputation challenged or questioned.

Cross-examination:

Mr. Wertz is also a member of Hamline church.

I would say Mrs. Wertz is not in the nervous condition now that she was some time ago.

When she told me she was afraid to go home was near the time of her separation from Mr. Wertz in September, 1900; perhaps two or three weeks before.

I went home with her after this, took her to the front walk, but I waited outside long enough to see that she had gained an entrance to her home.

77 CHARLES E. SWIGART, a witness produced by complainant, testified as follows:

I have lived in the city of Washington eleven years; am a machinist in the U. S. Navy. I know Mrs. Richardson, who lives at 1212 O street N. W. I know Mr. Charles A. Wolfe; became acquainted with him in the National guard. I am captain and adjutant of the Second regiment.

In the spring of 1900 I was at Mrs. Richardson's house. When I called Mr. Wolfe was there, and perhaps a half hour afterward Mrs. Wertz came in. The company were all seated in the dining-room. During the evening Mrs. Wertz and I went to the kitchen and popped some corn. After we were through we came out; something was said about its being too salty. I told Mr. Wolfe that if any more was to be popped he would have to shell it. Mr. Wolfe and Mrs. Wertz started for the kitchen and had hardly passed the second door before Mr. and Mrs. Jordan came in. Mr. Wolfe and I left the house that evening together.

Was at the graduation of Miss Nellie Jordan, June, 1900. Mrs. Wertz sat next to me, between Mrs. Richardson's sister and myself. Mr. Wolfe was quite a distance in front of us. I went back home with the party to Mrs. Richardson's.

Mr. Wolfe was not with Mrs. Wertz. Mr. Wolfe and I left the house together. Mrs. Wertz was at the house when we left.

As to the sort of a man Mr. Wolfe is, I found him a very worthy young man, but inexperienced, in the general term; as to worldly affairs, he is somewhat green. (Objected to.)

Cross-examination :

Have met Mr. Wolfe other times at the home of Mrs. Richardson besides the times mentioned, but never saw him in Mrs.  
78 Wertz' company at any other times than I have stated. Yes, Mr. Wolfe and I went away from the house together on the night in question, and one or two others.

WALTER P. PLUMLEY, a witness produced by complainant, testified as follows :

I have known Mr. and Mrs. Wertz about three years. I am a student of law and am in the office of W. Preston Williamson, the attorney.

Have known Miss Nellie Jordan almost five years. I know Mr. Charles Wolfe about two years. I met him at Mrs. Richardson's house. Miss Jordan is Mrs. Richardson's niece and lives with her. The family living at Mrs. Richardson's house, 1212 O street N. W., are Mr. and Mrs. Jordan (mother and father of Mrs. Richardson), Miss Nellie Jordan, and Mrs. Richardson. The number of Mr. Wertz' house when he lived on O street was 1210.

I attended the graduating exercises of Miss Nellie Jordan about June 20th, 1900; she graduated from Central high school; saw Mrs. Wertz after the exercises were over; she was with the rest of the party. Miss Jordan, Mr. Wolfe, and myself were a square ahead of the rest. Mr. Wolfe and I were carrying a basket of flowers that Miss Jordan had received.

Mrs. Wertz was living then next door to Mrs. Richardson, 1210 O street. All the party went into Mrs. Richardson's house. Did not leave Mr. Wolfe at Mrs. Richardson's; we all left about the same time.

Yes, sir; I was at Mrs. Richardson's house on a Sunday night about August 1st, 1900; called about eight o'clock; found Mrs. Jordan in the dining-room. In about half an hour the bell rang and Mr. Wolfe called. Soon after that Mrs. Richardson came in; she had been out driving with Dr. and Mrs. Street. After being  
79 there awhile we went in the parlor. It being a very hot night, the gas was not lighted in the parlor, but was burning full blast in the dining-room and hall.

Mrs. Wertz called right after church, about 9.15. She was living next door then. I stayed there until about twenty-five minutes of ten; as I went away Mrs. Richardson and Mrs. Jordan went to the door with me; they stood in the door and I stood in the vestibule; while we were there Mr. Jordan came home from church. All I said to Mr. Jordan was, "How do you do?" He passed right through to the dining-room. I talked to Mrs. Richardson and Mrs. Jordan about five minutes. Mrs. Wertz and Mr. Wolfe were in the



parlor, where we all had been. They were about ten feet from where we were standing. (Witness identifies picture No. 6, that represents the vestibule and entrance from parlor into the hall of Mrs. Richardson's house. Also picture No. 7, being a view of the entrance into the hall and a portion of the front vestibule, entrance from the hall into the parlor, and entrance from the hall into the dining-room, and a portion of the front steps. Also picture No. 8, representing a portion of the *portion of the* parlor looking into the hall, at the stairway on the lower floor of house 1212 O street. Also picture No. 9, showing a portion of the parlor, looking out of the front vestibule doors, through entrance between the hall and the parlor on the lower floor of this house. Also picture No. 10, showing the view of the front of the house of 1212 O street N. W.)

I had met Mr. Wolfe at Mrs. Richardson's before the Sunday night referred to when Mrs. Wertz was not there; have met Mr. Wertz in Mrs. Richardson's house. I have met Mr. Wertz and Mr. Wolfe together after the 30th of May, 1899, and they were on friendly terms. While on the train on the way to what is now known as Chautauqua Beach, July 4th, 1899, I saw Mr. Wertz and Mr. Wolfe together; did not see any quarrel or unpleasantness between them while on the train, nor was there any evidence of any unfriendly feeling between them.

80            Cross-examination:

Never met Mr. Wolfe in Mr. Wertz' house when Mr. Wertz was not there.

On the night of the commencement Mr. Wolfe and I were not the only gentlemen in the party. Captain Swigart was there. Mr. Wertz was not along. When we got down to Mrs. Richardson's it was about ten o'clock and we all went in. Mr. Wolfe went away about the same time I did.

81

NELLIE JORDAN.

I am the Miss Nellie Jordan who graduated June 20, 1900. Mrs. Wertz went to the graduating exercises with my grandfather and grandmother, my two aunts, Mrs. Richardson and Mrs. Kelly, Captain Swigart, my little cousin, and myself.

Mr. Wolfe did not go with us, but was at the commencement. He was not seated with my party. Mr. Wolfe and Mr. Plumley walked home with me, and the others mentioned walked a square behind us. We had lunch at my home which Mrs. Wertz helped my aunt, Mrs. Richardson, to arrange. Mr. Wolfe left the house with Captain Swigart, and Mrs. Wertz remained after they had gone and then went in next door to her own home.

Mr. Wolfe has been a general caller at our house upon the whole family, and probably remained an hour or two when he called. These calls occurred when Mrs. Wertz was not there.

The instance spoken of by my grandfather (Mr. Jordan) when Mrs.



Wertz and Mr. Wolfe were in the kitchen of our house, I remember. My grandfather and grandmother and Mrs. Richardson were also in the dining-room.

Cross-examination :

Mr. Wolfe called on the family once or twice when Mrs. Wertz was there.

Redirect :

My grandfather is eighty years old.

82 ZENOBIA RICHARDSON, a witness produced on behalf of the complainant in rebuttal, was recalled for further examination, as follows :

I wish to repeat most emphatically my first statement that Mrs. Wertz and Mr. Wolfe were never alone together in my house. I remember very distinctly the two instances referred to by my father, Mr. Jordan, one when they were in the parlor, and the other when they were in the kitchen. The time they were in the parlor was on a Sunday night in August, 1900. " Mr. Wolfe, Mr. Plumley, my mother, and myself were seated in the parlor, and because it was so hot the gas was not lighted in the room but was burning brightly in the dining-room just beyond and in the hall just off the parlor. Mrs. Wertz had been to church and came home and rang our bell. She was there some fifteen or twenty minutes when Mr. Plumley arose to go, my mother and I accompanying him to the door, where he spoke a few words about his mother's illness which delayed the good-bye for a few moments. During this time my father came home from church, passed directly through the hall into the dining-room beyond ; when Mr. Plumley left, my mother and I returning to the parlor. During the time that we were in the hall, Mr. Wolfe was directly in front of the door with his back towards the folding doors, Mrs. Wertz was seated a little further towards the other side of the room facing the doorway, both being in plain view of us and we of them." I have seen the pictures which were offered in evidence in this case. They represent the parlor, hallway, gas fixture in the hall directly in front of the folding doors, entrance and vestibule of my house, 1212 O street, as it was that night. Mr. Wolfe was at the house some time before Mrs. Wertz came and left about twenty minutes after Mr. Plumley. Mrs. Wertz remained until about 11 o'clock, about an hour after Mr. Wolfe had gone. Mr. Plumley, Mr. Wolfe, Mrs. Wertz, my father and mother and myself were the only persons at the house that evening. My mother is now

83 in Colorado, and I cannot say when she will return, as she has been sick since she left Washington. Mr. Wolfe was regarded by my family as a friend and called at the house many times, never asking for any particular member of the family when he came, but whoever happened to be in the house when he came went in the parlor or sitting-room with him.

The kitchen incident mentioned by my father was: "In the spring of 1900, Mr. Wolfe and Captain Swigart called at the house on a Thursday evening. I was sewing in the dining-room which was used as a sitting-room, and later Mrs. Wertz came in from the next door. Captain Swigart wanted some popcorn and I told Mrs. Wertz she would have to pop it for them if they had any as I was too busy to stop sewing. She and Captain Swigart went to the kitchen and popped a large pan full of corn, but on returning to the dining-room I found fault with them for having salted it. Mrs. Wertz said she would pop me some without the salt, when Captain Swigart said to Mr. Wolfe 'Then you will have to shell it.' Mr. Wolfe and Mrs. Wertz left the dining-room and went to the kitchen. There was a bright light in both rooms, Captain Swigart and myself sat in front of the door leading out of the dining-room, Mr. Wolfe stood just in front of the kitchen door opposite, when a moment or two later my father and mother came in from prayer-meeting, my father going directly into the kitchen. As soon as the one popper full of corn was popped Mrs. Wertz and Mr. Wolfe returned to the dining-room, my father and mother also sat down in the dining-room, and my niece, Miss Jordan, was with us."

Prior to the time my father was called to testify in this case nothing was ever said about Mr. Wolfe having been at the house the same time Mrs. Wertz was there. Every day for three months prior to the separation of Mr. and Mrs. Wertz he spoke of his domestic troubles to my father. My father's memory is not good; he is very forgetful.

The two occasions spoken of were the only times Mrs. Wertz and Mr. Wolfe were at my house at the same time after he left the Wertz home, with the exception of the night my niece graduated from the high school, June 20, 1900, when a party of

84 friends came to the house after the exercises were over.

My niece had included Mr. Wolfe in her list of invitations, neither Mrs. Wertz nor myself having anything to do with it. Mrs. Wertz went to the exercises with my family, and did not see Mr. Wolfe to speak to him until after our return to the house. Then she helped me in the dining-room and "there was no chance for a moment's conversation with Mr. Wolfe during the time they were there. All the party left at the same time except Mrs. Wertz, who stayed and helped me for perhaps half an hour, and then went in home next door."

Mr. Potter Cox has testified that on the 30th day of May, 1899, the party who made the trip to Analostan island left the house, 1210 O street, the home of Mr. Wertz, about ten o'clock in the morning, but "Mr. Cox is mistaken, they left the house about 12 o'clock. The reason I am so positive in this is that I had been to market and brought home some strawberries; in giving some to the Wertz company they pronounced them so fine that I concluded to return to market the second time and get some to preserve. I had to hurry to get back to the market, three blocks away, before they closed at noon, and I was just returning the second time when the party left

the house. Another reason that I am positive is that I went in Mrs. Wertz' house that morning about ten o'clock and they had not yet been to breakfast, although Mr. Cox was there then, and they were discussing what they should do and where they should go." Mr. Wolfe was preparing to take a wheel ride and said that he didn't care for fishing. I heard Mr. Wertz say to Mr. Wolfe, "Come and go with us anyway and you and Nora (meaning Mrs. Wertz) take along something to read while we fish."

I met Mr. Elder at Mrs. Wertz' house on two different occasions, once late in the winter of 1898-'99 before Mr. Wolfe came to the house, and once soon after Mr. Wolfe came. Mr. Elder's treatment of Mrs. Wertz convinced me that she was held in very high esteem by him, as his entire conversation was directed towards her, and he asked her advice on all subjects.

85 I met Mrs. Fryer at Mrs. Wertz' about January, 1900. The entire Fryer family were dining there. Mr. Wertz was at home for dinner, but went out soon after, and it was in the evening that I was there. Mrs. Fryer congratulated me on living next door to such a nice little woman, as she said she never had such a good neighbor in her life as Mrs. Wertz. In speaking of her trouble she seemed to sympathize very much with Mrs. Wertz.

About the second week in July, 1899, Mr. and Mrs. Wertz and Mr. Wolfe were going to Chevy Chase one evening, and invited me to go with them. I could not go, and on the porch just before starting I heard Mr. Wertz say that he had business at the Cairo and could not go, but for Mr. Wolfe and Mrs. Wertz to go anyway. They did so, all three of them starting from the house together, as I understood it, the two bound for Chevy Chase and Mr. Wertz for the Cairo flats. I saw Mrs. Wertz and Mr. Wolfe when they returned about ten o'clock, and Mrs. Wertz told me they had met Mr. and Mrs. Athey, members of Hamline church, and spoke of introducing Mr. Wolfe to them.

I called at the Wertz house on two different evenings in the fall of 1899, to see Miss Wright about doing some sewing for me; the first time I had to wait some time for some one to answer the bell, and Mr. Wolfe came down from his room and opened the door for me. After I had gone into the house and made my wants known, Mr. Wertz came down the back stairs in his shirt sleeves and later Miss Wright came into the parlor to see me. For some reason both of them were frustrated. This was in the latter part of September. The second time was after Mr. Wolfe had left and Mr. Wertz and Miss Wright were staying in the house alone. I rang twice, then saw Mr. Wertz come through what used to be Mr. Wolfe's room from the back part of the house to open the door for me. On both occasions it was nine o'clock in the evening, and Mrs. Wertz was visiting her father in Ohio. Miss Wright was undoubtedly more

friendly to Mr. Wertz than Mrs. Wertz, as the latter had  
86 no confidence in Miss Wright and had but very little to say to her. Mrs. Wertz, from the time that I lived there, never seemed to take very much to Miss Wright, but from November,

1899, she seemed to have lost any confidence that she might otherwise have had.

During the time that Mrs. Wertz was sick, from July 23rd to August 15th, the day she left for Ohio, I was there at least twice a day and the only time I ever saw Miss Wright in the same room with Mrs. Wertz was one evening when the latter was on the couch in the parlor; Miss Wright came inside the door when she came home about eight o'clock and inquired how Mrs. Wertz was feeling, then went directly upstairs to her room. Miss Wright rented a room there, furnished it herself, and paid \$5 a month for it. She took her meals where she sewed, leaving the house at seven o'clock in the morning and not returning until from seven to nine in the evening. She was not living with them as one of the family, and I never saw her in conversation with Mrs. Wertz in my life except in the sewing-room. Miss Wright never prepared a meal for Mrs. Wertz while she was sick, and I did not miss fixing one breakfast nor one dinner from July 23rd to August 15th, taking her breakfast to her about eight o'clock and never seeing Miss Wright. I never saw Mrs. Wertz display any evidence of ill-temper. I was at Mrs. Wertz' house on the evenings of July 31st and August 1st, 1899, and stayed until about 10 o'clock, and Miss Wright was not there. Mrs. Wertz was a very sick woman, but in the evening when I left she seemed quite bright and her pulse was very much stronger than it had been, but in the morning when I went in to take her breakfast she looked as though she were about ready for her coffin. Mr. Wolfe was not sitting on the bed the evenings of July 31st, August 1st or 2nd, 1899, or on any other occasion when I was there. I never saw or heard at any time anything but the most friendly relations between Mr. Wolfe and Mr. Wertz and never heard of any dispute or quarrel between them. Mr. Wertz never made any charges to me of any

intimacy between his wife and Mr. Wolfe. During Mrs. Wertz' 87 illness she occupied the front hall bed-room. The room measures nine feet long by six and a half wide. A large double bed stood crosswise in the room. A stool was between the window and the bed. There was a space of three feet between the window and the bed in order to make a passageway from that room into the sitting-room, leaving one foot of space between the bed and the hall. The hall door opened into the room, and it would be impossible to open or close the door without moving the bed. Mr. Wertz slept with Mrs. Wertz until August 1st, then he slept on a cot in the sitting-room, which was situated lengthwise directly in front of the door opening from the sitting-room into the hall, with just room enough for the door to open without hitting the foot of the cot. There was a transom over both of these hall doors and over the hall door of Mr. Wolfe's room, about ten feet away. Movements and conversation in these rooms could be heard very distinctly by occupants of the other room. I base this statement on the fact that in my own house, exactly like theirs, I occupy the room corresponding to Mr. Wolfe's, and can hear very plainly conversation and movements in either of the front rooms. At the time Mrs.

Wertz was sick the doors of the two front rooms were left open—I never saw them any other way. At the time Mrs. Wertz was taken sick she had one night-gown made like a mother hubbard, and she had one old calico wrapper. Both of these were soiled, and I took her one of my wrappers until they could be washed. From that time she alternated between the two until she was well, and has worn the white night-gown as a wrapper into my house on several different occasions after she was able to be up. I considered it a suitable dress for a visit of that kind. Mr. Wertz had — little colored girl come in to wash his dishes on one or two occasions while Mrs. Wertz was sick, but I never heard of her so much as taking Mrs. Wertz a drink of water. The night Mrs. Wertz stayed in the hammock all night during the summer of 1899 was August 8th. Miss Wright was not in the city. In telling me of the occurrence the next day, Mrs. Wertz said she got chilly towards morning  
88 and went in Miss Wright's room to see if she could find a quilt, but there was none there except in the folding bed and that was so hard to let down that in her weak condition she could not budge it. I was at the house when the doctor called to see Mrs. Wertz. He said that, while the medicines I had been giving her were all right, she needed something besides, and gave her a prescription for some medicine which she took in connection with mine. Mr. Wolfe and Miss Muirhead were in the room when the doctor came, but left before any conversation was had. When Mrs. Wertz was first taken sick I gave her a bottle of wine that I had in the house. When it was gone I mentioned the fact before Mr. Wertz, but no other was furnished. The morning after she had the chill, August 1st, I told her that if she had had the wine that night it would have helped her, and I gave Mr. Wolfe a dollar and asked him to get her the wine and bring it back to her before he went to the office.

Mr. Wertz is in the Treasury Department and I am in the War Department. We have walked together down Vermont avenue to McPherson square on our way to office on several different occasions. He has said to me that he was trying to coax such a nice boy down at the office to come and take his room, and that as he was a very fine musician he was offering him the use of the piano as an inducement to get him to come. The next day after Mrs. Wertz stayed in the hammock all night, August 9, 1899, while Miss Wright was away on her vacation, Mr. Wertz and I walked together towards the office, and he said to me that he and Nora (meaning Mrs. Wertz) had *wuarreled* the night before about her going to Ohio; that she seemed determined to go, and that he did not want her to as "it was mighty hard on a fellow to work in office all day and then go home and cook his own meals;" he also said that he did not like the friendly way Nora had of treating Mr. Wolfe; that he did not blame Mr. Wolfe at all, but it was just Nora's free way of treating friends in her own home. That evening when I returned from office he met me on the front porch and said, "Regarding the

89        matter I was speaking to you about this morning, do not say anything about it to Mr. Wolfe for he would leave, and of course I don't want to lose that \$10 a month for a mere whim."

Mr. Wertz always made Mr. Wolfe feel very much at home when in the parlor, and when he was there seemed to enjoy his music as much as any one. He wanted Mr. Wolfe to go with them wherever they went and said he wanted to get him acquainted with the young folks in Hamline church. After Mr. Wertz had so much business to attend to at night I have on several different occasions heard him ask Mr. Wolfe to take Mrs. Wertz some place, or ask if he was going to be at home that night, that he wanted to go away. Mr. Wolfe is a stenographer and typewriter and did a great deal of work for Mr. Wertz during that summer, on one occasion getting the typewriter from my house and having Mr. Wolfe use it at his own home. I have heard Mr. Wertz speak of the work that Mr. Wolfe had done for him at other times up to and later than August, 1899.

I moved to 1212 O street in August, 1898, and shortly afterwards I was in my front hall bed-room and they were in theirs. I heard them quarreling, but could not understand very much that was said. I heard Mrs. Wertz say that she could not stand that kind of treatment much longer.

Mrs. Wertz and Mr. Wolfe have never seen each other at my house since Mr. and Mrs. Wertz separated.

From the time Mrs. Wertz returned to Washington in November, 1899, to the time she separated from her husband in September, 1900, with the exception of a month or two that Miss Fryer was staying at Mrs. Wertz', a daily complaint was made to me by Mrs. Wertz that she could not get any sleep on account of her husband coming to her room and either trying to get in bed with her or trying to bring up a controversy of some kind. She has on many occasions told me the next morning of him going to her bed-room in a nude condition and waking her out of a sound sleep or coming in and jerking her out of bed before she was scarcely awake, or of coming in when she was ready for bed and when she was reading her Bible or on her  
90        kne-s and enter into a quarrel of some kind or other. When she would tell these things to me she would cry and say she did not see how she could live that way much longer; that something would certainly have to be done. She showed plainly that she had had no sleep, and was gradually breaking down under the strain. I heard many quarrels, the most of them being indistinct as to the exact cause; but one time, when I was in my kitchen and they in theirs, I heard Mrs. Wertz trying to coax him to consent to live peaceably. She told him that she was willing to live with him and do everything that she could for him except sleep with him, but that her doctor had told her she was injuring her health and she felt it herself, and did not want to do that. Mr. Wertz said that he would not enter into any such agreement; that was what he married her for, and if she did not consent that her life should be a



hell on earth. I have no interest whatever in this case, except that I lived next neighbor for two years to one of the purest and truest women that I ever knew, and I know from my own eyes and ears and believe, from what she has told me, that she has been cruelly treated by her husband.

Cross-examination :

I have seen Mr. Wertz treat his wife cruelly. When any man does not take care of his wife when she is sick he treats her cruelly, whether anything else ever happens. I am not at all prejudiced against Mr. Wertz; he has a right to treat his wife as he pleases, but when the time comes that the wife rebels and tries to be separated from her husband, if I can help her I have a right to do so without having any predjudice against the man.

Counsel for the defendant objects to statements made by the complainant to the witness on the ground that same are heresay.

Mrs. Wertz' mother's letters came to my house addressed to me, as it was but natural that her mother would write things to her at a time like that that she would not care for Mr. Wertz to see ;  
91 especially would not care for Mr. Wertz to get a letter and Mrs. Wertz not get it. She received no letters at my home except those from her mother.

Redirect examination :

Mrs. Wertz had trouble in keeping Mr. Wertz from taking her letters—from getting them and reading them first; that was the reason that she had her mother address her letters to me. This method of correspondence was not adopted until after she had much trouble with her husband. After the occurrence of Mr. Wertz trying to take a letter from Mrs. Wertz that she had written to her father (as testified to in direct testimony), Mrs. Wertz came into my house within five minutes; her hands were very red and scratched, and she was very much excited and nervous.

92 CHARLES A. WOLFE, a witness for complainant, testified as follows:

I lived at Washington Grove from August 1st to September 30th, 1900. I called at Mrs. Richardson's Sunday night, August 5th; called about 8 o'clock and stayed until almost ten. Mrs. Jordan and Walter Plumley were at the house when I called, and Mrs. Richardson came in a little later. I came to the city that afternoon at Mr. Thomas' request and stayed at his house until almost 7 o'clock. I missed the 7 o'clock train, and, the next train not leaving until 10.15, called at Mrs. Richardson's to pass away this time. Mrs. Wertz called at Mrs. Richardson's that night after she returned from church. Mr. Plumley left the house first; he left about half past nine. I was in the parlor with Mrs. Wertz while Mrs. Jordan and Mrs. Richardson went to the door with Mr. Plum-

ley when he left. While they were at the door, Mr. Jordan came in; he did not stop, but walked straight through the hall to the kitchen. (Witness recognizes a view of Mrs. Richardson's house, showing hallway, staircase, and gas jet. Also another view showing hall doors, etc.) I was about 3 feet from the hall while they were at the door. Mrs. Wertz was sitting across the room from me. The gas was burning in the hall and also in the dining-room, both rooms adjoining the parlor. Mrs. Jordan, Mrs. Richardson, and Mr. Plumley were about 6 feet away. When Mr. Plumley left, they came back into the parlor. Mrs. Wertz was there when I left. (Witness identifies picture No. 6 as being a view of vestibule, hall doors, and hallway of Mrs. Richardson's house.) From the Sunday night in June, 1900, until the Sunday night, August 5th, 1900, I had not seen Mrs. Wertz. From the 5th of August I did not see Mrs. Wertz again until about the middle of October. I then saw her at Mrs. Fryer's. I called to see her for the reason that Mr. Wertz had taken this matter to the office and had preferred charges there against me. I called to urge her to either settle their differences or get her attorney to settle the matter, so that I could be vindicated. Mrs. Fryer's sister  
93 was at the house when I called. Mr. Wertz preferred the charges shortly before that time. I have called at Mrs. Richardson's a great many times; called on no particular member of the family; have called there a great many times when Mrs. Wertz was not there. On the 4th of July, 1899, I went to Bay Ridge with Mr. and Mrs. Wertz; Mr. Wertz was very friendly with me on that day. During the month of December, 1900, I was on annual leave; called at Miss Unger's twice during the month. Mrs. Wertz was stopping there at that time. I had been requested not to leave the city, as I would be called as a witness in this case, and I called to urge her to hurry the case along. I know Miss Unger and had called there several times before this. I received two invitations from Miss Unger to come and board at her house. (Witness identifies both letters.) The three times I saw Mrs. Wertz outside of Mr. Thomas' office were these two and the time I saw her at Mrs. Fryer's. I saw Mrs. Wertz at Mr. Thomas' office the three different times testimony was taken and twice other when testimony was to have been taken but was postponed. Mr. Wertz on several occasions, prior to their separation, requested me to go places with his wife. Once in July, 1899, he requested me to go to the theatre with her. Mr. and Mrs. Wertz and myself made arrangements to go to Chevy Chase lake one night, but just before starting Mr. Wertz said that he had some business to attend to and did not go. Mrs. Wertz and myself rode out, and while there we met Mr. and Mrs. Athey. We told Mr. Wertz after returning whom we had met. The three of us went to Chevy Chase several times during the summer. I did a great deal of typewriting for Mr. Wertz between December, 1898, and September, 1899. During June and July it was almost a daily occurrence for him to ask me to do work for him. During the latter part of June, 1899, he



called at Mrs. Richardson's, got a typewriter, and we worked all that afternoon and until one o'clock the next morning, save when we went to church. I did a great deal of typewriting for him in August, 1899. For this work I have never received one cent as compensation, nor has he ever offered me  
94 anything. When I was working at Mrs. Wertz' house I used Mrs. Richardson's typewriter. Mr. Wertz wanted so much typewriting done on a great many blank forms of Government leases of property on the Indian reservation in Wyoming. These leases were prepared for him and he would take them to some one else to correct and bring them back to me. He would go out in the evening and be away from eleven o'clock at night to two the next morning; this was almost a nightly occurrence during the month of June and July, 1899. While I was doing this work for him there were no charges made against me for any misconduct on my part towards his wife; during the time I was doing this work he never exhibited any unfriendly feeling towards me nor did we ever have a quarrel at any time.

About the first of September, 1899, I had a conversation with Mr. Wertz about the room; asked him if he wanted to rent me the room during the winter; he told me that he anticipated my staying there, and wanted me to make it my home. Mr. Wertz never showed any unfriendly feeling towards me until the summer of 1900, since which time he had avoided meeting me. I often met him after I left the house in September, 1899; he has come to my room in the office and spoken to me there.

I know Mr. Ellis, a witness who has testified in this case. In March, 1900, he handed me an application for membership in the Masonic order, and requested me to fill it out. (Application offered in evidence.) Mr. Wertz is a Mason, and suggested to me several times that he thought it would be a good idea for me to join the Masonic order; he was one of the two persons who endorsed my application for the Royal Arcanum.

I know Mr. Elder, a witness in this case; he called twice at Mr. Wertz' house while I roomed there—once in April, about five minutes; the next time directly after that, while I was scarcely acquainted with him; during this second visit Mrs. Richardson was in the parlor all the evening. There were no differences between Mr. and Mrs. Wertz that I can remember.

About August 1st, 1899, I took dinner with Mr. Wertz  
95 and Miss Wright while Mrs. Wertz was sick upstairs; Miss Wright prepared the dinner and Mr. Wertz invited me to take dinner with them. After Miss Wright returned from her vacation in September, 1899, and before Mrs. Wertz returned from Ohio, Mr. Wertz, Miss Wright, and myself were the only persons in the house. I heard him come out of her room one night about September 14; I had been out riding on my wheel and came in about eleven o'clock, heard Mr. Wertz come out of her room and go down the back stairs on his tip-toes, open the front hall door very quietly, and then went out, come back in, close the vestibule doors,

the hall-room door, then go to bed. Very frequently during that period I saw he and Miss Wright together when I put my wheel away, and have heard Mr. Wertz come down the back stairs (from Miss Wright's room). I do not know of any business they had together; I know when they saw me they separated very quickly.

I was not on intimate terms with Mrs. Wertz, as Miss Wright stated; I never attended Mrs. Wertz more than to get her a glass of water or hand her medicine if no one else was in the house. On the two occasions I came home at noon Miss Wright was not there; Miss Nellie Jordan was there both times and Mrs. Muirhead once. The reason I came the first time was to bring a bottle of wine that Mrs. Richardson had asked me in the morning to bring; the second time Mrs. Wertz was very sick and I went home to see how she was, as in the morning she had looked more like a dead person than a live one.

It is not true that Mrs. Wertz gave me her time and attention, as stated by Miss Wright. As a rule, Mr. Wertz was not home during the summer of 1899, was out nearly every night, not returning until from eleven till two o'clock. Mrs. Wertz never went to my door and asked me to give her a comfort; I, however, got a comfort for her one morning about two o'clock. I heard her ask Mr. Wertz several times to get up and get her the comfort; he would not do it, and, having waited about fifteen minutes, I stepped to the back

96 hall, got a comfort that was there, took it to the bed-room door and threw it on the bed where Mr. Wertz was with her.

It was a cool night and raining; Miss Wright was not in the room, and after I threw the comfort on the bed I went to my room.

It is not true, as Miss Wright has testified, that she was in the room during the evening of August 1st, 1899; Mrs. Richardson was in the house, and before going home she assisted Mrs. Wertz to bed, but Miss Wright was not seen during the entire evening. I did not get up about daylight the next morning and go to Mrs. Wertz' room, nor did I at any time that morning sit on Mrs. Wertz' bed; no request was made by Mr. Wertz to his wife, in the presence of Miss Wright, to get me a pillow so that I might rest more comfortably. I did not get up that morning until after seven o'clock; I did not see Mrs. Wertz until I was ready to go to office, probably about a quarter to eight. I never heard or knew of Mr. Wertz locking his wife's door, during the time I was doing typewriting for him, in order to keep me out of his wife's room, nor did Mr. Wertz ever intimate to me any such thing either directly or indirectly, nor had I ever been in Mr. Wertz' room during the night, nor did Mr. Wertz ever awaken and find me in his wife's room, nor did Mr. Wertz ever make such charge or intimate any such thing, to my knowledge. When Mrs. Wertz was sick she was dressed in a loose wrapper. I never went in her room during her illness and sat on the bed, nor did I ever meet her alone downstairs dressed in her night gown.

I did not stay in the parlor on the 3 of June, 1899, until half past nine o'clock. It is not true that Mrs. Wertz and myself were alone in the hammock almost every night. There were two hammocks

there and I had an interest in one of them, as I paid half towards the new one; they were both on the second-story back porch, as that was the coolest part of the house, and it was customary to entertain company there; it was the usual place for the family to sit during the hot weather. Mr. Wertz and I were never out there until

97 half past one o'clock, nor did Mr. Wertz at any time while I was there ask his wife to come in from the porch and go to bed. Mrs. Wertz, however, did stay out on the porch all night one night; it was the night of August 8th, 1899, while Miss Wright was away on her vacation.

I never combed Mrs. Wertz' hair nor brought her water to wash. I usually spent my evenings at the house or out wheeling; I rode my wheel a great deal that summer.

I was at Miss Nellie Jordan's graduation exercises at her invitation (invitation offered in evidence). I did not go to those exercises with Mrs. Wertz, nor did I know that Mrs. Wertz was there, nor did I see her there, but did afterwards see her at Mrs. Richardson's house, but did not go to the house with her; went with Miss Jordan and Mr. Plumley, the rest of the party being behind us. I left Mrs. Richardson's house, where 10 or 15 people were entertained, in company with Captain Swigart.

Mrs. Fryer did not call or visit at Mrs. Wertz' house while I lived there. I was sick some time in 1900, and was absent from the office three days; Mr. Wertz called to see me in my room at the office and asked me if I had a nurse, and when I told him I did not he said the Arcanum would furnish a nurse for the sick members.

Mr. Wertz did not say in my presence and the presence of Miss Wright that he had locked his wife's door and it must be kept locked, and that he intended that it should be locked until his wife was able to be up, because he objected to my going in the door from the hall into Mrs. Wertz' bed-room. Mr. Wertz did not at the time I lived at the house ever say one word about what I had done in going home at noon and taking his wife the bottle of wine; Miss Wright was not in Mrs. Wertz' room when I brought the bottle of wine, but Miss Jordan was there. I never sat beside Mrs. Wertz in the hammock at night in the month of July, 1899, nor did I ever hear of any request that Mrs. Wertz had made to her husband to have me remain in the house.

98 When Mr. Wertz was at home evenings he was with the rest of the family and was not left alone and deserted by his wife. Miss Wright told me the morning of August 1st when I went to get my wheel, while she was in the kitchen, that Mr. Wertz had made a statement to his wife that she was afraid he would always regret, that Mr. Wertz had said he did not care if his wife never got well. Miss Wright was not in the front sitting-room the two days I came home at noon, and she did not find me reading the paper to Mrs. Wertz or Mrs. Wertz reading to me; nothing of the kind ever happened. I was not upstairs with Mrs. Wertz the time Miss Wright went away on her vacation in August, 1899, while she was taking breakfast with Mr. Wertz. I was never out in the hammock

while Mr. Wertz was home in the sitting-room. I heard Mr. Wertz say to Miss Wright the morning of August 1st, when she went to her room and called her, "Come quick, I believe Nora is dying."

Cross-examination :

I did not apply for membership to the Masonic organization. I did not present any written bill for my services for typewriting for Mr. Wertz. On the night of September 16th, 1899, when I paid him my rent, he asked me if I could get a room elsewhere, but did not give me any reason; he did not say that I had been corresponding with his wife, and that she had never treated him right while I was there; I never heard of any such statement until this moment. It would not be natural for me to ask him why he wanted the room; I would not stay in a house where they asked me for the room. I could not say why I did not ask him the reason.

On the 5th of August, 1900, I went to Mr. Thomas' house at his request, because he had several questions he wished to ask me in relation to this case; the talk was generally about what Mr. Wertz had told him (about me) to the effect that I was the cause of his wife leaving him, and that I had broken up his home; that I had  
99 been meeting her out and several other things. Mr. Wertz had never said any such things to me.

The charges preferred against me by Mr. Wertz at the office were made to the deputy auditor, but were not in writing—made in the latter — of September, 1900. I was on my leave during the month of December, but remained near the city at a farm in Montgomery county. I came to the city during that time only once. I went to Mrs. Unger's house and saw Mrs. Wertz. I obtained her address from Mr. Thomas; saw her in the back parlor, with the doors between the front and back parlor closed, but the door from the front hall open. I brought a box of candy with me; not particularly for Mrs. Wertz, for I expected to meet the whole family. I gave the box to Mrs. Wertz, but did not intend she should have the whole box; intended it for the whole family.

I heard Mr. Wertz come out of Miss Wright's room, and I heard Miss Wright in there afterwards, although I did not see Mr. Wertz come out of Miss Wright's room. About a month after Mrs. Wertz had been away in the summer of 1899 she wrote me a note and enclosed it in a letter to Miss Wright, telling me where to find clean towels. I suppose she wrote to me because she did not know whether the colored woman was taking care of the house or whether she was placing clean linen where I could find it.

Redirect examination :

I told Mr. Thomas the same story on August 5th, 1900, at his house that I have told in this case. Witness identifies letter dated July 19, 1900, addressed to C. R. Beckley, Orrville, Ohio, as being in the handwriting of Mr. Wertz (letter offered in evidence, Complainant's Exhibit No. 17):

DEAR SIR: Your welcome letter of the 2nd inst. came duly to hand and found us well, and I was certainly glad to hear from you. Sorry you are no better, and I assure you that I am willing to do all in my power to right things at this end, that you may have the advantage of the good you say it will do you.

100 I am sorry I wrote that last letter to you, since you sent a copy of it to Nora, as she misconstrues my intentions in writing said letter, and thinks I did it to hurt her character.

Well such is not the case; some portions of it might have been worded different so that there could have been no room for doubt, but I did not say nor did I mean that Nora was a bad woman in any way, and I never intended even by inference to cause any reflections on her character. What I meant to convey was that no cause should be given, however small, that might cause gossip, for it always grows. These things are sometimes done innocently.

Her actions toward me have been better recently and I have relented, and am doing my best to do the proper thing, and to treat her kindly, and will, God helping me, try to so live and treat her, that hereafter there would be no reasonable ground for complaint. But I need her help.

Nora has consulted an attorney relative to securing a divorce. Now some of her best friends have advised her against such a course; people who are older, and have had years of experience, and also her attorney advised her that the best course was a reconciliation. But she seems determined, and I am afraid the poor girl does not fully realize the step she contemplates.

I have an idea that if she left the city for a while, and went somewhere on a visit that this matter would not be brought so much to her mind and that this storm would eventually blow over, and things yet may be righted, as I stand ready to do my part.

Hoping to hear from you, I remain,

Respectfully,

M. A. WERTZ,  
*Room 24, 2nd Floor, U. S. Treas'y Dep't.*

When I left the Unger house the greater portion of the candy was left, and I have no doubt the family enjoyed it.

101 At the hearing of this case and after the testimony and proceedings had been read to the court, counsel for complainant moved the court to take the testimony of the complainant regarding the secret assaults committed upon her by the defendant when no witness was present, as alleged in the bill, and particularly the unnatural assault mentioned in the bill, but the court ruled that the complainant was not a competent witness and declined to allow such testimony to be taken.

*Instructions to Clerk for Preparation of Record.*

Filed December 5, 1901.

In the Supreme Court of the District of Columbia.

NORA B. WERTZ, Complainant,	}	Equity. No. 21745.
vs.		
MELVIN A. WERTZ, Defendant.		

The clerk will please prepare the transcript of record on appeal in this suit and include therein the following:

1. Petition for divorce.
2. Answer of the defendant.
3. Order striking out certain portions of defendant's answer.
4. Decree dismissing bill.
5. The testimony in the cause in narrative form as per exhibit.
6. Memorandum of note of appeal and order for citation.
7. Memorandum of issuance and acceptance of citation.
8. Memorandum of approval in filing of appeal bond.
9. Præcipe.

E. H. THOMAS,  
*Sol'r for Complainant.*

Service of copy of above præcipe acknowledged this 5th day of December, 1901.

A. A. LIPSCOMB,  
Per ADGATE LIPSCOMB,  
*Sol'r for Defendant.*

103 UNITED STATES OF AMERICA, }  
District of Columbia, } ss:

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 102, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 21745, equity, wherein Nora B. Wertz is complainant and Melvin A. Wertz is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District,  
Columbia. this 20th day of December, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

104 In the Court of Appeals of the District of Columbia, January Term, 1902.

NORA B. WERTZ, Appellant, }  
   *vs.* } No. 1159.  
   MELVIN A. WERTZ. }

The clerk will please eliminate from the printing of the record the following designated portions which are unnecessary for the consideration of the questions involved, viz:

The last four lines of page 5, commencing after the word "divorce" with the word "and."

The first seventeen lines of page 6.

The 5th prayer of the bill on page 7.

The 12th to the 22d lines, both inclusive, on page 10.

Commencing with the word "duly" on the 7th line, omit rest of said line to and including line 13, page 18.

All of page 47 and the first fourteen lines of page 48; pages 49 to 57, both inclusive.

All of page 59 except first twelve lines; all of pages 60, 77, 78, 79, and 80.

All of page 84 except first ten lines.

The first eight lines of page 85.

Omit lines 21 to 33, both inclusive, on page 94.

E. H. THOMAS,  
*Att'y for Appellant.*

(Endorsed:) No. 1159. Court of Appeals, D. C., October term, 1901. Nora B. Wertz, appellant, *vs.* Melvin A. Wertz. Appellant's designation of parts of record to be omitted in printing. Court of Appeals, District of Columbia. Filed Dec. 28, 1901. Robert Willett, clerk.

105 In the Court of Appeals of the District of Columbia, January Term, 1902.

NORA B. WERTZ }  
   *vs.* } No. 1159.  
   MELVIN A. WERTZ. }

To the Clerk:

I hereby designate that the entire record of this cause on appeal to this court, as per transcript of record, is necessary for the consideration of the case on its merits, and ask the same be printed as it appears.

ANDREW A. LIPSCOMB,  
*Attorney for Appellee.*

(Endorsed:) No. 1159. Nora B. Wertz, appellant, *vs.* Melvin A. Wertz. Appellee's designation of additional parts of record to be printed. Court of appeals, District of Columbia. Filed Dec. 30, 1901. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1159. Nora B. Wertz, appellant, *vs.* Melvin A. Wertz. Court of Appeals, District of Columbia. Filed Dec. 21, 1901. Robert Willett, clerk.

COURT OF APPEALS,  
DISTRICT OF COLUMBIA,  
FILED

MAR 27 1902

*Robert Willing*  
CLERK

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Court of Appeals, District of Columbia.

JANUARY TERM, 1902.

No. 1159.

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NORA B. WERTZ, APPELLANT,

vs.

MELVIN A. WERTZ.

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BRIEF FOR APPELLANT.

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E. H. THOMAS,

*Solicitor for Appellant.*

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**In the Court of Appeals of the District of Columbia.**

NORA B. WERTZ, *Appellant*,  
*vs.*  
MELVIN A. WERTZ. } No. 1159.

**BRIEF AND ARGUMENT OF E. H. THOMAS,  
SOLICITOR FOR APPELLANT.**

## Statement of the Case.

The appellant claims a divorce from the appellee on the ground of cruelty. By the Bill (filed September 26, 1900, Record, pp. 1 to 5) the cruelty averred is as follows, viz: actual violence, deprivation of sleep, threats, nervous prostration arising from and coupled with sexual abuse, shame, mortification and mental anguish.

The parties werè married November 6, 1890.

The evidence (briefly recited) shows that appellee without excuse, in September, 1892, struck his wife in the face because she asked him not to tease her and was cross and ugly to her in private. This was during the visit of the appellant's mother (Record, top page 12). He was also very cross and disagreeable in November, 1892, when appellant's brother visited her (Record, p. 21). This brother again visited his sister in 1897 and remained about one year, and during this time he saw the husband assault the wife by

striking her in the face with his open hand and saw him push her around a number of times very roughly when he was angry, and when he would see me (says the witness) he would make out he was only fooling. This witness also testifies (Record, p. 21) "they had a great many quarrels, all of them brought on by Mr. Wertz. A great many times when these quarrels occurred I would leave the house, and many times at night I have heard him quarreling with her and scolding her and could hear her crying." "During these times my sister was much distressed and would go upstairs and cry, and it seemed to me that she didn't want me to notice that he was treating her in an ugly manner. I never saw or knew my sister to do anything that would justify these actions on the part of her husband."

These cruelties and others, detailed in the evidence, were observed by the wife's brother during the year 1897 or 1898 and were without any cause whatever and no *defence* or *explanation* is made of them by the appellee. These were all acts of cruelty committed in privacy, yet of a nature well calculated to undermine the health of the wife.

The same thing is proven to have continued when the wife was in feeble health. For example it appears by the testimony of Mrs. Richardson, the next door neighbor of these parties, that about the 25th of November, 1899, "One Saturday night about that time I was sitting in my house alone, the rest of the family being asleep, when I heard a noise from next door that sounded like the falling of a piece of furniture. I ran to the hall that I might be able to hear plainly, and heard Mr. and Mrs. Wertz talking in rather loud tones, but the only thing I could distinguish was Mrs. Wertz saying, 'If you don't go away I will go in next door.' Afterwards, the next morning, Mrs. Wertz told me that she had locked her bedroom doors in order to try to get some sleep, as she had not had a night's rest since she returned

from Ohio ; that when Mr. Wertz found they were locked he worked at the doors for over an hour until he had taken the locks off and gotten into her room. She said that during that time the only thing she could do was to pray, for she felt that if he ever got that door open that he would certainly kill her. When he got into the room she said that he pulled her out of the bed, and that was evidently the noise that I had heard, and the loud talking afterwards."

This same month, November, 1899, the colored wash-woman, Lizzie Parker, found appellant in bed suffering from severe bruises and had found her sick on a couch on a previous occasion. Two weeks after finding her in bed the same witness saw bruises on appellant's body and that time heard the husband threaten his wife that he would lick her with a poker that he had in his hand. Witness had often heard them quarreling and the wife was afraid of the husband (Record, p. 13).

Mrs. Richardson found appellant's hands very red and quite swollen on the 21st of February, 1900 (Record, p. 16) and found appellant white as a ghost and scarcely able to walk across the floor on the night of the 21st of March, 1900, with her hands scratched and was shown places on appellant's arms the next day which had turned black and blue, her hair was wet from water her husband had poured on her and her physical health was injured thereby (Record, p. 16). These injuries were accompanied by complaints on the part of the wife that they had been inflicted by her husband. On the same day, Mrs. Fluckey, a caller, found appellant pale and thin, careworn, haggard, worried, and she seemed to have been crying (Record, p. 14). Mrs. Martin saw bruises at the same time (Record, p. 24), and also testified to similar complaints.

It will be noted that during this time appellee was apparently to the outside world an affectionate husband, while in

reality he was cruel to his wife in private; the evidence shows that the wife was very sick from the latter part of July until November, 1899, and was in poor health during the rest of the time mentioned.

Besides these acts showing cruelty, the appellee, during the year 1899 and 1900, threatened his wife with bodily harm. In August, 1898, the parties were heard quarreling and the wife was heard to say that she could not stand that kind of treatment much longer (Record, p. 52). In November, 1899, he was heard to tell his wife that her life should be a hell on earth (Record, bottom page 52, top page 53). November, 1899, appellant showed plainly that she had no sleep and was gradually breaking down under the strain (Record, p. 52).

Besides this cruelty, the appellant's mother testifies: "I have seen him do many things in the presence of others that was humiliating to the complainant in the extreme; have seen him walk up to her and put his hand in her bosom, sit down beside her in company and lift her clothes from her limbs and put his hand under her clothes (Record, p. 13). Mrs. Richardson says, "It was a common occurrence for Mr. Wertz to treat his wife with indecent familiarity; in fact, I did not go in as often as I otherwise would have done had it not been for such things as this happening" (Record, bottom page 16). Her brother says he treated her indecently by lifting her clothes and putting his hands under her clothes, while his sister protested and tried to keep her husband from doing it (Record, bottom page 22, top page 23). Mr. Wolfe says, "Just before she went home the 15th of August, and many times before she was taken sick, while the three of us were sitting in the parlor, I have seen him pull her on his lap, run his hands over her breasts, sometimes underneath her clothing, run his hands behind and between her limbs and sort of pinch her, and carry on

this way until she would exclaim, 'Melvin, do stop this, you are acting dreadful' " (Record, p. 19).

In July, 1899, she was sick and was suffering from prostration and weakness, was sick about three weeks, during which time she was practically alone during the day. About the third week she got up from the bed, but was so weak she could scarcely walk across the floor (Record, pp. 14 and 15); her nerves were strung to the highest pitch, she was liable to faint on slight cause; she was treated at her home in Ohio, where she had gone for her health in August, 1899, and her physician describes her condition (Record, pp. 10 and 11), and says, "She was in a general run-down condition, a neuresthenic, sleepless, and highly nervous in every sense. I inquired whether she had been overworked physically; to which she answered she had not. I asked her whether she had recently a serious sickness; to which she answered she had had nervous prostration. I asked whether or not she could give a cause for her sleeplessness; she answered she could not. I then proceeded to make a physical examination. *Her heart's action was rapid and feeble, the digestive function was impaired, and on examination I found her suffering from an endometritis. The uterus was large, tender, and with a downward tendency. She also was suffering from a double salpingitis, ovaries on both sides large, inflamed, and exquisitely tender. I advised her that conditions in her life should be changed or she would become a nervous wreck; that she should place herself in a condition to avoid worry, excessive physical exercise, seek cheerful society, be in the open air as much as possible, and should be under the advice of a competent physician; to refrain from the marital relations while this condition existed.*" "I stated to her that if she would retain her reason the condition of her pelvic organs should be improved and rendered free from disease, and that this

*end might be attained it would be necessary for her to refrain from sexual intercourse while this condition existed. I advised her thus for the reason that sexual indulgence would favor the progress of the disease."* "She stated that in her opinion she would never get any better so long as she lived with her husband, and that in her opinion her disease was brought on and continued by her sexual relation with her husband, not only because of the frequency of the sexual act, but also because of the manner. She also maintained that in her opinion her husband was impotent. Q. *Speaking from your knowledge as a physician, would such sexual abuse as she then described have a tendency to produce or bring about the physical condition she was then in?* A. *Yes, it would.*" This witness was not cross-examined nor was this evidence disputed in the slightest manner.

Her mother says (Record p 12) that when she arrived (August 16, 1899) she was very weak and could hardly walk, was extremely nervous, pale, thin and without any appetite.

Although the appellee was informed of his wife's condition, saw this physician in Ohio in November, 1899 (Record, p. 11) upon their return to Washington in November the evidence shows that he persisted in his purposes in disregard of his wife's health, and refused her overtures to live peaceably, making the threat before mentioned: that her life should be a hell on earth. This is also shown by the testimony of Mrs. Richardson (Record, bottom page 52) who says "I heard many quarrels, the most of them being indistinct as to the exact cause; but one time, when I was in my kitchen and they in theirs, I heard Mrs. Wertz trying to coax him to consent to live peaceably. She told him that she was willing to live with him and do everything that she could for him except sleep with him, *but that her doctor had told her she was injuring her health, and she felt it herself, and did not want to do that.* Mr. Wertz said that he

*would not enter into any such agreement ; that was what he married her for, and if she did not consent that her life should be a hell on earth."* This evidence is nowhere disputed.

That the appellee deprived his wife of needed sleep is shown by his *own witness*, Miss Wright, who testifies to his deliberate, wanton vulgarity to his wife, and to an evident purpose on his part, while she was suffering from nervous prostration, to give her no rest, disguised by a false and groundless charge against her, which is manifestly either absurd or malicious in character. This witness states that on the night of August 1st, from nine o'clock until half-past one in the morning, while this couple were undressed, and the wife in bed, the witness sat in the small bedroom and saw an assault by the husband on the wife, and heard the wife object to the husband getting in bed with her ; *at a time when the doctor said the wife was run down, needed cheerfulness and rest.* When the witness left the room the husband was lying on a couch five feet away from the wife, but she was called by him in the morning when he was dressed in his night clothes, and the husband told her the wife was very nervous. The witness then went in the wife's room and *found her suffering from nervous hysteria.* What had happened between the husband and wife in the interim (from half-past one until about daylight of this early summer morning) which gave the wife nervous hysteria, can readily be understood without further discussion. It is believed that this testimony of abuse is sufficient to justify the wife's application for divorce, for certainly no modest woman should be required to live with a man who would treat her in such an inconsiderate manner.

That the wife was deprived of sleep is also clearly shown by the testimony of her brother who, in 1897, prior to any supposed reason for divorce, heard his sister crying in the



night time and heard her husband abusing her so that he had to leave the house as late as twelve o'clock at night. He says (Record, p. 22) "Many times at night I have heard him scolding her, as I have stated, but could not understand what was said. There were different occasions when I heard these scoldings and heard her crying, and the defendant was doing most of the talking. I do not know how many times I have gotten up and dressed myself and gone out on a five-mile walk at twelve o'clock at night. I knew I have done so quite a few times; not less than eight or ten. I never spoke to complainant nor did she to me about these quarrels."

The testimony of other witnesses in this regard is made plain and corroborates the testimony of Mr. Wolfe who says that in August, 1899, the appellant was on the verge of nervous prostration and about the tenth was convalescing; that her nerves were very much affected. He differs with the statement of Miss Wright about what actually occurred on the 1st of August, 1899, but that difference in either view of evidence is immaterial. This witness says (and it is evident from the indecent treatment shown from the testimony of Miss Wright and from the surrounding facts that what he says is the truth): "One morning about 3.30 A. M. about August 1, 1899, I was awakened by a noise from the front room. I listened for a moment and learned that he was quarreling with her again. He commenced by teasing her, and from what I could hear it was plainly evident that he was trying to get her to submit to his sexual desires. I heard her say she was too ill and weak. He still persisted, and finally when refused absolutely became very angry, and among other things said, "I don't give a damn if you never get well." At about this time he pushed the bed over, shut the hall door and locked it and finally went to his bed in the front sitting-room.

By this time Mrs. Wertz was moaning so I could hear her in my room. In a few moments I heard him go to her room, then down the front stairs and up the back ones and call Miss Wright. He asked her if she would not come and see Nora, that she was much worse. He said, "Come quick, I believe Nora is dying." I heard Miss Wright go down the back stairs and up the front and to Mrs. Wertz' room. I got up about seven o'clock that morning, and in passing from my room to the bath room (by that time the door had been opened) I could see Miss Wright fanning Mrs. Wertz and trying to quiet her. *Mrs. Wertz was clinging to the bed clothes with both hands.* I saw her before going to the office and she looked much worse than I had ever seen her, and was almost too weak to talk; sort of talked between breaths. She said that morning that she never thought she would live till morning; she was afraid he was going to kill her right there."

In this partial review of the case but few of the complaints of the wife at the time of the ill treatment in 1899 and 1900 have been mentioned, and if they are considered as they should be (it is submitted) in connection with the exhibition of bruises and the wife's condition, they add great force to the appellant's case. If, in addition to that, the Court will consider what the wife actually said, it is not believed that there can be any doubt that the appellant has been most harshly, viciously and cruelly treated by her husband. It is respectfully submitted that these statements of the wife are in main verbal acts regarding the cruelties made evidence from necessity in such case and that if they are excluded the effect will be to permit an ostensibly good husband to cruelly treat his wife in private without affording her any redress.

To the case made by the appellant there has been no defence or merit interposed. Not a single assault has been

denied or explained, not a single act shown to have been inflicted in any other way than is claimed by the wife, not a threat denied ; but the defence seems to be one of implied evasion and departure from appellant's case. An attack is made on the reputation of the wife and evidence of irrelevant matter (*stricken from the answer over objection*) has been constantly sought to be introduced. There is no charge of infidelity on the part of the wife. There is no intimation of wrongdoing on her part. On the contrary her husband, previous to the filing of the bill, asserted that his wife was not a bad woman, that he did not intend even by inference to cast any reflection on her character (Record p. 59), but after she had filed her suit, although he refused and failed to bring a single witness to testify against his wife's purity, by innuendo and by direct charge he asserted that she had been guilty of adultery. This is disclosed by the evidence of the witness Athey, who says that the husband made accusations against his wife as to her moral character and that these accusations did affect his opinion of her, which it would require evidence to change (Record, p. 33). It is needless to say that the decree dismissing the wife's bill has not changed this witness' opinion, but has undoubtedly caused him and others to believe that the charges the husband did not make in this suit have been proven and sustained by the Court. This is the real inducement for the appeal in this case.

The character of the husband who has made such a charge is shown by the evidence of the witness Riffle (Record, p. 25) ; in July, 1900, the husband told him that he was satisfied his wife was true to him, but in October, 1900 (after the suit was filed), he told the same witness that his suspicions had been aroused, but also explained that the man of whom he was suspicious and who roomed at his house, was there with his consent and that he did not order

him away because this party knew of a scheme whereby the appellee expected to make enough money to fix himself and he was afraid the man mentioned would give it away. In other words, he was willing, for a consideration, to barter away his wife's honor. The same thing is shown by Mrs. Richardson's testimony (Record pp. 51 and 52).

On the 9th of August, 1899, the appellee told her that he and his wife had quarreled because she was going to Ohio, that he did not like the friendly way she had of treating Wolfe, etc., but that evening he waited outside his door to tell her not to say anything to Wolfe about it or he would leave, and said : "Of course I do not want to lose \$10 per month for mere whim."

The rest of the witnesses for the defense are simply those casual visitors at the house who may have thought they understood the domestic relations of this couple but as the Record discloses, they really knew nothing at all. Their testimony amounts to nothing, and it is respectfully submitted that the case is abundantly proven and that the decree should have been in favor of the appellant.

### **Assignment of Errors.**

First. The Court below erred in not granting appellant a decree of divorce from the bond of marriage.

Second. The Court below erred in not granting the appellant a decree for divorce from bed and board.

### **Argument.**

#### **FIRST.**

### **The Complainant is Entitled to a Divorce from the Bond of Marriage.**

The wife need not establish every allegation of the bill.

"The question is not what is *unproved* but what is *proved*."  
(Holden vs. Holden, 1 Haggard C. R., 453.)

The complaining party must establish so much of the alleged cruelty as constitutes a ground of divorce but he *need do no more*. (2 Bishop Marriage, Divorce and Separation, Sections 1447, 1440. *Cole vs. Cole*, 23 Iowa, 433.)

In an action for divorce on the ground of cruelty, evidence of the conduct of the parties and acts not specially pleaded, but antedating the charges specially made in the complaint, may be received as confirmatory and accumulative evidence in support of the facts pleaded. (*Segelbaum vs. Segelbaum* 39 Minn., 258, 260.)

Forgiven cruelty is admissible. In an action for separation on the ground of subsequent cruelty as showing the character of the acts, and that they arose from a permanent mode of acting. (*Doe vs. Doe*, 52 Hun., 405, 406.)

"The law does not require there should be many acts." (*Holden vs. Holden*, *supra*; *Hawkins vs. Hawkins*, 65 Md., 110; *Freeny vs. Freeny*, 80 Md., 408.)

"It is not necessary that the conduct of the wife should be entirely without blame. For the reason which would justify the imputation of blame to the wife, will not justify the ferocity of the husband." (*Holden vs. Holden*, *supra*.)

"Neither is it material from what provocation the violence originated." (*Hawkins vs. Hawkins* and *Freeny vs. Freeny*, *supra*.)

The letter of the husband (Record, p. 59) in which he says: "Her actions toward me have been better recently and I have relented, and am doing my best to do the proper thing, and *to treat her kindly*, and will, God helping me, try to so live and treat her, that *hereafter* there will be no reasonable ground for complaint," is both a vindication of the wife and evidence that the husband had ill treated his wife.

*Holden vs. Holden*, 1 Hag. Con., 453.

Circumstantial evidence is sufficient to establish cruelty.

"Ill-usage of the kind embodied in this case is of a domestic nature and does not generally occur in public or in the open face of day. It generally takes place in secret, sometimes in the retirement of the night. Such acts are more likely to be witnessed by servants or persons in the house, and even by them are not frequently seen, but can be inferred from the accompanying circumstances or resulting consequences. So evidence of a person not an eye-witness, giving details of what she has heard and who had seen bruises, marks on the plaintiff which, she was informed at the time, and were then supposed to be, results of ill-treatment of the wife, are competent. Neither is it material from what provocation the violence originated. *The law does not require there should be many acts*, nor is it necessary that the conduct of the wife should be entirely without blame." (Hawkins *vs.* Hawkins, 65 Md., 107 ; Freeny *vs.* Freeny, 80 Md., 408.)

And it is not necessary *to allege or show* that *impairment* of health actually resulted from the conduct of the husband, where the facts proved show that injury was wilfully inflicted on the wife, and it necessarily resulted in the impairment of her health.

In an action for divorce upon the ground of extreme cruelty of the defendant in causing grievous mental suffering to the plaintiff, by an annoying course of conduct, and by the use of vile and indecent epithets, and charges of in chastity, it is not necessary *to allege or show* that *impairment* of health resulted from the conduct of the defendant toward the plaintiff ; and where there was evidence tending to sustain the allegation of the complaint as to the acts and probative facts of cruelty causing the grievous mental suffering alleged, and the court found that they were committed by the defendant, and that defendant by his conduct wilfully inflicted upon the wife grievous mental pain and suffering, " thereby greatly impairing her health, " it was said that the finding as to the impairment of plaintiff's health

is unnecessary, and it is immaterial whether that part of the finding was or was not justified by the evidence.

*Smith vs. Smith*, 119 Cal., 183-187.

“By the great weight of authority \* \* \* cruelty, as a ground of divorce, is not limited to physical violence. Conduct actually causing mental suffering of severity sufficiently to seriously affect health and endanger life is much cruelty also.” (*Ogden vs. Ogden*, 17 App. Cases D. C., 104-112.)

Acts which outrage the feelings of modesty and decency constitute cruel treatment (*Gholston vs. Gholston*, 31 Ga., 634). Insults and neglect are as bad as actual bruises of the person (*Glass vs. Wynn*, 76 Ga., 319-322).

A husband who unreasonably and brutally effects sexual intercourse with his wife, to the injury of her health, when he knows the injury and suffering it will inflict upon her, is guilty of intolerable cruelty, such as will authorize a divorce.

*Mayhew vs. Mayhew*, 61 Conn., 233 ;  
*Melvin vs. Melvin*, 58 N. H., 569 ;  
*English vs. English*, 27 N. J. Eq., 71 ;  
*Gardner vs. Gardner*, 104 Tenn., 410.

The charge of adulterous intercourse against the wife, if groundless, is undoubtedly an act of gross cruelty against the wife.

*Wright vs. Wright*, 6 Tex., 18 ;  
*Graecen vs. Graecen*, 2 N. J. Eq., 459 ;  
 Bish. M. & D., Sec. 462 ;  
*Graft vs. Graft*, 76 Ind., 136, 138 ;  
*Wagner vs. Wagner*, 36 Min., 239 ;  
*Straus vs. Straus*, 67 Hun., 491 ;  
*Smith vs. Smith*, 8 Or., 100-101 ;  
*Crow vs. Crow*, 29 Or., 392 ;  
*Eggerth vs. Eggerth*, 15 Or., 626 ;  
*Jones vs. Jones*, 60 Tex., 457.



So a like false charge against the wife in the pleadings in the cause is cruelty.

*Rodgers vs. Rodgers*, 17 S. W., 573 (Ky.).

Complaints of the wife to neighbors are admissible in evidence in connection with bruises and injuries as tending to show violence inflicted upon her by the husband.

*Hawkins vs. Hawkins*, 65 Md., 110 ;  
*Berdell vs. Berdell*, 80 Ill., 604-606 ;  
*Odom vs. Odom*, 36 Ga., 286 ;  
*Cathson vs. Cathson*, 22 Pa. St., 275 ;  
*McGovern vs. McGovern*, 52 Tex., 657 ;  
*Hanna vs. Hanna*, 3 Tex. Civ. App., 51 ;  
*Black vs. Black*, 30 N. J. Eq., 222 ;  
*Ball vs. Ball*, 8 Watts, 355.

And such evidence is of greater importance when the parties are not witnesses than when they are ; and so where the wife is seen with injuries upon her, inflicted by some person, not the result of accident and one or two days before she had left her husband who had previously struck her, the presumption against him was said to be so strong that the court did not hesitate to fix the act upon him.

2 Bishop M. D. & S., Secs. 1448-1449.

In divorce cases such evidence seems to be admissible on the ground of necessity and the cases do not seem to require that the complaints in order to be evidence should be made at the very time of the injury, otherwise there would be no necessity for proving them in any event for the witnesses to the act would be sufficient to prove the injury.

Even in cases other than those for divorce there is no inflexible rule as to the length of the interval between the act charged and complaint.

*Snowden vs. U. S.*, 2 App. D. C., 89 ;  
*Averson vs. Kennard*, 6 East, 193.

"It is impossible to tie down to time the rule as to declarations ; we must judge from the circumstances of the case."

Rawson *vs.* Haegh, 2 Bing., 99 ; see also,  
 Ins. Co. *vs.* Mosley, 8 Wall., 397 ;  
 Ins. Co. *vs.* Hillmon, 145 U. S., 285 ;  
 Beaver *vs.* Taylor, 1 Wall., 637 ;  
 Jewell *vs.* Jewell, 1 How., 232 ;  
 Gaines case, 12 How., 534.

The evidence of the defendant is not addressed to the issue ; it is a departure and if of any moment is a confession.

The acts of cruelty are not denied nor are the complainant's witnesses cross-examined as to the injuries or assaults, if at all, except in the most prefatory manner.

The reliance is on the recriminatory matter, *not sufficient in itself as a defense* ; and which, in any event, was stricken from the answer by the court. (Record, p. 8.) Such defense to be shown must be averred in the answer. (Roe *vs.* Roe, 14 Hun., 612-614.)

The court cannot lay hold of any matter not properly put in issue, on the ground that public policy and public morals require it. (Jones *vs.* Jones, 18 N. J. Eq., 34.) Allegation without proof passes for nothing, proof without allegation passes for nothing. This is the rule in reference to all proceedings in court. (Sec. 765, 2 Bishop M. & D.; Foy *vs.* Foy, 13 Ire., 90, 95 ; Johnson *vs.* Johnson, 4 Wis., 135 ; McQueen *vs.* McQueen, 82 N. Car., 471.)

The charge of adultery, whether by way of crimination or recrimination, should be stated in the pleadings in such manner that the adverse party may be prepared to meet it at the trial of the issue. (Wood *vs.* Wood, 2 Paige, Ch. 109 ; Tilton *vs.* Beecher, 59 N. Y., 185.) Recrimination also must, to be available, be pleaded and proved by the defendant. (1 Bishop, M., & D. sec. 341.) It is therefore submitted that

nearly all of the defendant's testimony is irrelevant and immaterial.

## SECOND.

**The court erred in not granting complainant a decree of divorce from bed and board.**

Under the Statute (R. S. D. C., p. 88) a divorce is allowed from the bond of marriage or from bed and board for cruelty endangering *the health* of the party complaining.

There was no demurrer filed to the Bill which contains a prayer in the alternative for divorce from bed and board if the court should be of opinion that an absolute divorce is not justified by the evidence.

It is submitted that the evidence is sufficient to require a decree of divorce from the bond of marriage, though in any event the limited divorce must be decreed.

Thus in California where a divorce from the bond of matrimony was prayed and granted by the lower court on the ground of desertion, cruelty, habitual intemperance and adultery, the appellate court, in an opinion by *Judge Field*, held "the desertion by the *plaintiff* was without excuse, and *her*, *conduct* is *by no means relieved* by the imputations of cruelty, neglect and habitual intemperance, cast upon the defendant in her complaint, none of which she attempted to establish and which we must therefore presume to have been wantonly made.

Still it is not sufficient, under the statute, to bar a decree, *the adultery of the* defendant being established, but it furnishes a proper subject for consideration by the court in determining the character of the divorce to which she is entitled. *The statute says divorce may be granted from bed and board*, or from the bonds of matrimony, but it never was intended that either should be indifferently granted according as the prayer of the applicant asked for one or the other

modes of relief. And the true rule which should govern the court, in the exercise of its discretion in this respect, is this, that to entitle to a decree for absolute divorce from the bonds of matrimony, the applicant must be the innocent party—one who has faithfully discharged the obligations of the marriage relation and seeks relief because really aggrieved or injured by the misconduct of the other; and, on the other hand, where there are circumstances showing a disregard of those obligations, though not carried to such a degree as to constitute itself a ground of divorce, the decree should only be a divorce from bed and board.”

Conant *vs.* Conant, 10 Cal., 258.

Where “there never was any *actual* violence committed by the husband upon the wife, *nor any threats of violence made* (the court said), but such cruelty may be inflicted on the wife by exhibition of a want of affection and a disregard of the marital relation as in the results or effects on the wife would exceed in punishment any blow that might be inflicted upon her person. It must be conceded that the defendant in this case is devoted to his children, and we are not satisfied the evidence before us presents such a case as would authorize a judgment *a vinculo matrimonii*, and thus destroy all hopes of a reconciliation between the parties.”

Divorce from bed and board decreed.

Irwin *vs.* Irwin, 93 Ky., 322.

So where *application* for divorce was made on the ground of *cruel and inhuman treatment* (stat.) the decree was from bed and board for *conduct toward her which rendered it unsafe and improper for her to live with him* (stat.). No violence shown. “To such treatment (‘personal indignities and angry altercations’) no self-respectful wife ought to be expected to submit.”

Hacker *vs.* Hacker, 90 Wis., 330.

A charge of extreme cruelty and of adultery may be joined in the same libel, and the court will decree according to the evidence produced.

*Yound vs. Yound*, 4 Mass., 430.

So dismissal of bill from bed and board on ground of cruelty is a bar to a subsequent suit for divorce from bond of marriage for reason thereof and new causes of cruelty.

*Fera vs. Fera*, 98 Mass., 155 ;  
*Wagner vs. Wagner*, 36 Minn., 239 ;  
*Klingenberg vs. Klingenberg*, 6 S. & R., 186 ;  
*Hackney vs. Hackney*, 9 Hump., 450.

Facts which would entitle plaintiff to a limited divorce may be joined in a complaint with those justifying an absolute divorce, and thereupon relief may be sought in alternative form.

A demand for divorce on the ground of adultery may be cumulated with a demand for separation from bed and board.

*Mack vs. Handy*, 39 La. Ann., 491.

The decree of the court below, it is submitted, should be reversed and counsel fees and suit money (reserved until hearing on the merits by former order) should be allowed the wife, together with a decree in her favor for absolute divorce.

Respectfully submitted,

E. H. THOMAS,  
*For Appellant.*

# Court of Appeals of the District of Columbia.

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No. 1159.

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NORA B. WERTZ,

APPELLANT,

vs.

MELVIN A. WERTZ,

APPELLEE.

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BRIEF FOR APPELLEE.

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ANDREW A. LIPSCOMB,

*Solicitor for Appellee.*

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IN THE  
Court of Appeals of the District of Columbia.

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NORA B. WERTZ, APPELLANT,

v.

MELVIN A. WERTZ, APPELLEE.

---

} No. 1159.

---

BRIEF AND ARGUMENT OF ANDREW A. LIPSCOMB, ESQ., FOR APPELLEE.

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I.

This case is here on appeal from the decision of the court below dismissing the bill for divorce filed by appellant September 26, 1900, the sole ground therefor being cruelty, which was specifically denied by the answer, the prayer of the bill being in the alternative for a divorce "*a mensa*" or one "*a vinculo*." The brief of the appellant assigns but two errors of the court below: first, it did not decree a *divorce a vinculo*, and, second, it did not decree one *a mensa et thoro*. These are, in effect, but one assignment of error, and the only question before this court is, was the court below right on its consideration of all the evidence in the case in dismissing the bill.

In the bill, sworn to by the appellant, it was alleged (Rec., pp. 3 and 4) that "*about the middle of September, 1900, when at night, while your petitioner was asleep and without her consent, the defendant committed an unnatural and indecent assault upon her, the circumstances of which are too revolting to be spread upon the records of this court.*" This infamous allegation of the bill was by the defendant, on oath, answered as follows (Rec., p. 6): "*Answering the allegation that in September, in 1900, while plaintiff was asleep, the defendant committed an indecent assault on her, the defendant says that it is the product of a depraved imagination, incapable of either proof or denial, except on the part of the parties hereto, and is made with the hope of prejudicing this court against this defendant.*" The record shows that the plaintiff was never called as a witness to sustain this revolting charge, and not the slightest evidence was offered to sustain it.

Yet in the mutilated narrative of the case made by appellant, miscalled a record (p. 59), the following appears: "*At the hearing of this case, and after the testimony and proceedings had been read to the court, counsel for complainant moved the court to take the testimony of the complainant regarding the secret assaults committed upon her by the defendant when no witness was present, as alleged in the bill, and particularly the unnatural assault mentioned in the bill, but the court ruled that the complainant was not a competent witness, and declined to allow such testimony to be taken.*" But no exception seems to have been taken to this ruling of the justice below; if any such was made, no error is assigned upon it, and no reference is made to it in the brief of the counsel for the appellant.

It must strike this court as singular that so serious a charge should be made against the appellee, and then be

so flippantly abandoned. The only errors then to be considered are the duplicate ones above set forth.

The rhetoric of the bill, if proven, would undoubtedly make the defendant a remarkable monster. For instance, it is alleged (Rec., p. 2) that "*on the 21st day of February, 1900, while the parties hereto were living in the last-named house, the defendant choked the petitioner, who then and therefore endeavored to put defendant's hands away from her throat, whereupon defendant grabbed petitioner by the arm with great force and threw her the length of the hall therein, some fifteen feet, and against the side of the house with great violence, thereby wounding and bruising her and causing her to become sick and ill.*" It is needless to state that no testimony was offered to prove the marvellous physical feat put up in this poetic pleading.

Again, the bill alleges (Rec., p. 3) that "*the defendant at night sought, as he had theretofore, to deprive petitioner of needed sleep, and so did every night successively for three weeks prior to the 24th day of November, 1899, by means of threats, abuses, and quarrels, in an endeavor to physically and mentally exhaust petitioner.*" Of course, no proof was offered to sustain the absurd charge that the defendant for three weeks kept the plaintiff and himself awake at night to exhaust her, and besides the record (p. 39) shows that they were in Ohio until November 11th, that year.

Again, the bill says (Rec., p. 3): "*On the morning of the 21st of March, 1900, while petitioner was talking to defendant in the hall of said house and near the front door thereof, the defendant with great force struck your petitioner, knocking her senseless to the floor; so great was the suffering caused by said assault that petitioner was unable to speak or move for a long time.*" There is no proof of this sworn statement in the bill.

Again, she swears in the bill (Rec., p. 3) the defendant "*several times at midnight and in the early morning hours assaulted, abused, and quarrelled with the petitioner because she was not sleeping with him to his gratification to the great mortification, shame, and mental anguish of the petitioner.*" Yet, according to the testimony of Dr. Blankenhorn (Rec., p. 11), "*she also maintained that in her opinion her husband was impotent.*" It is not surprising that the chancellor below could not reconcile these inconsistencies.

The attention of this court is called to these things to indicate the wanton and cruel character of the charges in the bill and the total failure to prove them.

Since the bill prayed for a divorce *a mensa*, under the law as it then stood she was a competent witness. But she was not called, although her declarations to others were repeatedly offered in evidence in spite of repeated objections, all of which are carefully excluded from the record.

The record shows no proof of cruelty sufficient to justify a decree *a mensa* or *a vinculo*.

*THE RECORD SHOWS NO PROOF OF  
CRUELTY SUFFICIENT TO JUSTIFY A  
DECREE A MENSA OR A VINCULO.*

It is almost impossible from the record to classify the alleged cruelties, but it seems to be claimed that they consisted of assaults, neglect, and acts of indecency. As to the assaults, the only apparent proof of any is, first, by the mother, Mrs. Beckley, and occurred in September, 1892, eight years ~~after the marriage~~, under the following circumstances. (Rec., pp. 11-12):

*before filing the bill*

*"I witnessed an assault by the defendant on the plaintiff; we were getting ready to go sight-seeing; he was hindering, teasing, and tormenting her, and because she wanted him to quit he struck her very hard in the face."*

It seems quite remarkable that the defendant should have taken occasion to slap his wife in the presence of her mother, and the evident bias of this witness should discount her testimony, if lapse of time had not created a condonement.

The parties did not separate, but lived together until one day before the filing of this bill.

The second act of cruelty is testified to by complainant's brother, and is alleged to have occurred five years later, and in the year 1897 (Rec., p. 21). He swears:

*"I saw him strike her on one occasion in the face with his open hand, and saw him push her around a number of times very roughly while he was angry, and when he would see me he would **make out he was only fooling.**"*

It seems the defendant always took occasion to have one of his wife's family present when he became violent towards her.

The next alleged assault occurred in 1899, and is testified to by Lizzie Parker, a negress, who says (Rec., p. 13):

*"I heard the defendant tell his wife he was going to rake the fire down. She asked him not to do so, that she had dinner on, to which the defendant replied, 'he guessed he was boss in his own house, and if she bothered him he would lick her with the poker.'"*

But the same witness says she "*never saw the defendant strike his wife.*"

And the record shows that the only persons who testified to seeing an act of violence by the defendant towards

his wife are these three, and this during a period of ten years.

It would seem that the bias and character of this testimony would render it insufficient to justify a divorce. Especially as the testimony of Lizzie Parker is discredited by that of Mrs. Ida Fryer, a most respectable lady (Rec., p. 31).

*THESE ALLEGED ACTS OF CRUELTY IN  
1892, 1894, 1897, ARE CONDONED BY  
LAPSE OF TIME, COHABITATION, AND  
DELAY.*

It is true condonement was not set up in the answer as a plea in bar, because they were absolutely denied in the answer, but it was not necessary so to do to justify the chancellor in dismissing the bill.

*"It is the duty of the court to refuse a divorce in all cases when the evidence discloses, or the court discovers, on its examination of the witnesses, that the plaintiff is not entitled to a divorce whether the defence is alleged in the pleadings or not."*

Encyclopedia of Pleading & Practice, Vol. 7, p. 88.

There is a maxim concerning these divorce cases, "*that a cause is never concluded against the judge.*"

*"The court is bound to act for the public in such cases, and so has the right to hear proofs not strictly within the allegations of bill and answer. No one deserves to succeed in a suit to dissolve the bonds of marriage—that foundation upon which the whole framework of civilized society may be said to rest—who does not come into court without great blame, and it is the right and duty of the court to be gov-*

*erned by the facts of the case going to establish its true character, no matter how they may be elicited."*

Ribet v. Ribet, 39 Ala. 348.

Peck v. Peck, 44 Hun. N. Y. 290.

Dutcher v. Dutcher, 39 Wis. 651.

*"If the defendant fails to set out affirmative matter relied on as a defence, the court may still, as representing the public, permit the introduction of evidence tending to defeat the plaintiff's claim, or on its own motion elicit such evidence."*

Owen v. Owen, 48 Mo. App. 208.

Cameron v. Cameron, 2 Colder, Tenn. 375.

*"Whenever facts are disclosed by the evidence which arouse the suspicion that the plaintiff is not entitled to a divorce, it is within the power of the court to examine the witness concerning facts not within the issues."*

Thompson v. Thompson, 70 Mich. 62.

Belz v. Belz, 33 Ill. App. 105.

Mattox v. Mattox, 2 Ohio, 234.

*"In the early days of the Republic, when there was a higher appreciation of the sanctity of the marital relations than now prevails, the judges took a part in the examination of the witnesses, not to aid the plaintiff in making out his case, but to prevent him from imposing on the court the semblance of truth for its reality. To this extent I reserve the right of intervening, but the parties seeking a divorce must make out the case according to the strict requirements of the law."*

Dismukes v. Dismukes, 1 Tenn. Ch. 266.

*"If the facts elicited by the court or otherwise disclosed by the evidence are not regarded as conclusive by the court, a reference may be ordered, or a new trial granted upon an amended answer; or the trial may proceed upon an amended or supplemental answer; or the action may be dismissed without prejudice. But where the court is satis-*



*fied that no divorce should be granted under the circumstances the suit will be dismissed."*

Thompson v. Thompson, 70 Mich. 62.

Belz. v. Belz, 33 Ill. App. 105.

Clague v. Clague, 46 Minn. 461.

Ribet v. Ribet, 39 Ala. 348.

Mattox v. Mattox, 2 Ohio, 234.

Morrison v. Morrison, 62 Mo. App. 299.

The appellee claims here all benefit of these decisions and the policy of the law in respect thereto, but the testimony tending to show condonement, and in the nature of recrimination, was properly considered by the court below as explanatory of the wife's conduct and the husband's actions.

#### ON POINT OF OTHER CRUELTY IN CHARGING UNCHASTITY.

The counsel for appellant on page 14 of his brief gives ten authorities to the effect that "*the charge of adulterous intercourse against the wife, if groundless, is undoubtedly an act of gross cruelty.*"

Nobody denies this, and it is a waste of printer's ink to cite such trite decisions.

The answer to this is that the bill does not charge it, and that not an iota of testimony was offered to sustain the statement.

The brief of appellant, page 10, refers to the testimony of witness Athey (Rec., p. 33), but all Athey says is: "**He made insinuations** during these conversations against Mrs. Wertz's **moral** character, or statements which **I think** were open to that construction, and I so construed them."

This is the sum total of testimony on this point. The witness Athey does not say that the defendant charged

his wife with *unchastity*. He simply says that he thought the remarks of defendant were open to the construction of being against her moral character, but whether they were against her moral character as to truth, as to religion, or as to honesty, he does not say.

The counsel for appellant considers this as the very heart of his case, for he says, page 10 of his brief: "*This is disclosed by the evidence of the witness Athey, who says that the husband made accusations against his wife as to her moral character, and that these accusations did affect his opinion of her, which it would require evidence to change* (Record, p. 33). *It is needless to say that the decree dismissing the wife's bill has not changed this witness' opinion, but has undoubtedly caused him and others to believe that the charges the husband **did not make** in this suit **have been proven** and sustained by the court. This is the real inducement for the appeal in this case.*" So it appears, by the statement of counsel, that the "*real inducement for the appeal in this case*" is not for errors of law of the lower court, but because a vague statement as to the moral character of the appellant made by her husband to one witness might be and was believed by somebody else not named, and was by the dismissal of the bill endorsed as true by the chancellor, to her injury.

The counsel produces no authorities in his able brief tending to show that this court ought to act in this respect as moderators of Hamline Church.

*ON OTHER CRUELTY IN FORCING SEXUAL  
INTERCOURSE WHEN PLAINTIFF WAS  
ILL.*

This is not charged in the bill but, on the contrary, the petition declares (Rec., p. 3) that "**defendant \* \* \* assaulted, abused, and quarrelled with petitioner, because she was NOT sleeping with him to his gratification.**"

On August 15, 1899, the petitioner went to her parents' home, in Ohio, for a visit, where she remained until November, 11, 1899, when she returned to this city with the defendant, who had gone on to Ohio and stayed at her parents' home with her for a month.

While in Ohio, in the latter part of her visit, she consulted Dr. Blankenhorn. "*The most important consultation was late in her visit*" (Rec., p. 10). The doctor advised "*her to refrain from sexual intercourse while this condition existed*" (Rec., p. 11.) There is no proof that Mr. Wertz knew of this advice, and there is no competent evidence that after that time Mr. Wertz had sexual relations with his wife. On the contrary, Mrs. Richardson testified (Rec., p. 50) that Mr. Wertz did not sleep with his wife after August, 1, 1899, and Miss Wright testified (Rec., p. 35) that "*Mr. and Mrs. Wertz occupied separate bedrooms after they came from Ohio* (November 11, 1899). *She told me she would not occupy the same room,*" and the bill alleges they occupied separate rooms, and that he consented to this arrangement (Rec., p. 2), and that after her return from Ohio on November 11, 1899, she lived in the same house with him until the 25th of September, 1900, when she left while he was at his office, taking with her two wagon-loads of furniture. During

this period of time, Miss Emma J. Wright, a maiden lady, 56 years of age, who had lived with them, in all, six years and a half, was the only other inmate of the house. She had the best opportunity to see the daily conduct of the parties, and her disinterested testimony furnishes his complete vindication.

Miss Wright testified (Rec., p. 34): "*After Mr. Wolfe came she did not treat her husband very nicely; I think she treated Mr. Wolfe the best. When she was sick in the summer of 1899 (the night of August 1st), she was lying on the bed; Mr. Wertz came to the bed and she struck him in the face, pulled his hair and kicked him; she said he couldn't sleep there, and I asked him to sleep on the couch; he said he wouldn't unless I promised to stay all night.*"

The explanation of this scene is shown by the cross-examination of this witness by Mr. Thomas (Rec., p. 36). "*Mr. Wertz was lying on the couch in his room, probably about 5 feet away from the door between his room and his wife's room; Mr. Wertz got ready to go to bed about 11 o'clock that night; he told me Mr. Wolfe was in the room the night before and he did not want to leave Mrs. Wertz alone. \* \* \* Both Mr. and Mrs. Wertz were undressed. I was not undressed, and was there as a sort of guardian angel. \* \* \* She told her husband when he laid down on the bed, that she did not want him to lie down, but he persisted in it unless I promised to stay all night.*"

It appears that Mr. Wertz was beginning to be suspicious of Wolfe's attentions to his wife.

This Mr. Wolfe, a young unmarried man, was a lodger at the house at this time, and his is the only testimony tending to show sexual intercourse, and is as follows (Rec., p. 18): "*One morning about 3.30 A. M., about August 1, 1899, I was awakened by a noise from the front*

room. *I listened for a moment and learned that he was quarrelling with her again. He commenced by teasing her, and from what I could hear it was plainly evident that he was trying to get her to submit to his sexual desires. I heard her say she was too ill and weak. He still persisted, and finally when refused absolutely became very angry, and, among other things, said: 'I don't give a damn if you never get well.' At about this time he pushed the bed over, shut the hall door and locked it, and finally went to his bed in the front sitting-room. By this time Mrs. Wertz was moaning so I could hear her in my room. In a few moments I heard him go to her room, then down the front stairs and up the back ones and call Miss Wright. He asked her if she would not come and see Nora, that she was much worse."*

Again this Mr. Wolfe testifies (Rec., p. 19): "*About the 10th of August, 1899, a little after seven o'clock in the morning, the time I usually got up, I heard him worrying her. It was plainly evident that he was trying to get her to submit to his sexual desires again. I heard her remonstrating with him. I got up directly and paid no more attention to it. When I was getting my wheel out, and getting ready to go to my breakfast, about eight o'clock, I saw her sitting in the parlor. She was in a very flushed condition and looked very irritated."*

This very interesting lodger sees this sprightly invalid up at eight o'clock in the morning looking "*flushed and irritated.*" This was five days before she left for Ohio, and before the doctor told her to refrain for a time from sexual intercourse, and this is all the legal testimony bearing on the question of so-called sexual cruelty, and it is furnished solely by this one man (Wolfe) whom Mr. Wertz had reason to suspect; it is the same Mr. Wolfe who came home from his office during the day, while

Mr. Wertz was absent from home, and brought her a bottle of wine (Rec., p. 51). It is the same Mr. Wolfe who is often alone in the hammock with her at night, and in the parlor with her until one o'clock at night; who is twice seen in her bed-room alone with her at noon (Rec., p. 35), and at other times sat on her bed while she was in bed (Rec., pp. 34 and 35).

It is the same Mr. Wolfe who is alone with her on May 30, 1899, for five or six hours in the shades and shadows of the trees where the underbrush and trees were very thick on Analostan Island, and who could not be found after diligent search by the rest of the party. (See testimony of Porter Cox, Rec., p. 29.) On which occasion, by the testimony of this same Mr. Wolfe (Rec., p. 20): "*After reading I laid down and slept for about an hour, then we (Mrs. Wertz and I) went back to where we left the boat.*"

To further explain the relationship of this single witness to acts of sexual cruelty, the record shows that finally this confiding husband's eyes were opened to what others plainly saw, and on September 16, 1899, when she was in Ohio (Rec., p. 58), Mr. Wolfe was asked by Mr. Wertz to leave the house, which he did, and, as appears by the testimony of Miss Wright (page 35), "*I (she) received a letter from her (Mrs. Wertz) about Mr. Wolfe being requested by her husband to leave the house, which I have destroyed. She said Mr. Wertz would regret it as long as he lived.*"

After this he meets Mrs. Wertz at the home of Mrs. Fryer, about the middle of October, 1900. (See Rec., p. 54.) They are also seen together, at night, at Chevy Chase Lake, by witness John C. Athey. (See Rec., p. 32.)

Also, he afterwards clandestinely meets Mrs. Wertz in the home of Mrs. Richardson, 1212 O Street N.W. (Tes-

timony of J. S. Jordan, father of Mrs. Richardson, Rec., p. 27.) *"Twice when I came home I saw Mrs. Wertz and Mr. Wolfe in the house together. Once they were in the parlor talking, and the other time in the kitchen. It was at night, between nine and ten o'clock. The gas was not lighted. They were alone in the parlor. \* \* \* I spoke to Mrs. Wertz once about meeting Mr. Wolfe in Iowa Circle. She admitted meeting him there, but claimed it was accident.*

*"\* \* \* I had been informed by Mr. Wertz that Mrs. Wertz had met Mr. Wolfe that night, and I asked Mrs. Wertz about it."*

And after he had been ordered from the house by the husband, and after the bill for divorce had been filed (see testimony of Zua M. Unger, Rec., p. 28), he calls upon Mrs. Wertz several times. *"He stayed about two and a half hours each time. They remained in the back parlor during these visits, with the doors closed. During these months (December, 1900, January and February, 1901) Mrs. Wertz remained away from her room one night. She was out late frequently."*

Mr. Wolfe himself admitted (Rec., p. 58) these visits, and that *"he brought a box of candy with him and gave it to Mrs. Wertz."*

This same Wolfe, on cross-examination (Rec., p. 58), testified *"that on the 5th of August, 1900, I went to Mr. Thomas' house (the attorney for the plaintiff), at his request, because he had several questions he wanted to ask me in relation to **this case**; the talk was generally about what Mr. Wertz had told him (about me), to the effect that I was the cause of his wife leaving him, and that I had broken up his home; that I had been meeting her out and several other things."* On the 5th of August, 1900, Mrs. Wertz had not left her home, no case had been filed, and

she did not leave her home until September 25, 1900, and the next day, September 26, the bill was filed, although it was sworn to on the 24th of September, the day before she left.

From Mr. Thomas' that Sunday night, August 5, Mr. Wolfe, on the pretext of having missed a train at 7 o'clock P. M., called at Mrs. Richardson's, as he himself testified, where he met Walter Plumley, a witness in Mrs. Wertz's behalf, and Mrs. Richardson, her ardent partisan, and, of course, purely accidentally, the lady herself (Mrs. Wertz), who also accidentally dropped in. (See Wolfe's testimony, Rec., p. 53.)

It can hardly be doubted that this witness (Wolfe) was lending all the assistance he could to urge her to leave her husband, and assist her in the divorce for which she and Mrs. Richardson were then plotting.

*These circumstances must have influenced the chancellor in dismissing the bill.*

*OTHER ALLEGED CRUELTY IN NOT FURNISHING FOOD, MEDICINE, AND MEDICAL ATTENDANCE DURING ALLEGED ILLNESS OF PLAINTIFF.*

Relative to the condition of Mrs. Wertz when she was ill between July 23, 1899, and August 15, 1899, when she went to Ohio alone, there seems to be a great difference of opinion. Two witnesses, Mrs. Richardson and Mr. Wolfe, want it to appear that one foot was in the grave, while others evidently were of a different opinion. In the first place, there is no evidence that she or anyone else was ever told by a physician that she had nervous prostration, but she seems to have had nervous hysteria from



all the descriptions given. Also, the fact that "*Dr. Middleton called twice*" (Rec., p. 19) during this period indicates a trifling trouble.

Mrs. Richardson testified (Rec., p. 15) that Mrs. Wertz had been sick "**about ten days**" before Dr. Middleton called, while the certified copy of his prescription and the original bottle with druggist Eliot's paster on, which are exhibits in this case, show that the doctor called on July 28, 1899, and that the prescription was filled on same date.

In this connection, referring to the mother's testimony about the matter (Rec., p. 12), she says her daughter told her the physician "*had given her prescriptions and had recommended wines and other things as necessary for her, but the defendant had refused to get said prescriptions filled, or to allow her money with which to do so, and had refused and neglected to provide the wines and other remedies so recommended.*" The exhibit referred to having disposed of part of this charge, would say as to the wine, that their grocer, Otto Ruppert, whose testimony has also been eliminated, testified that Mr. Wertz had secured of him sherry wine for medicinal purposes, which disposes of the other part.

As to the statement of her mother that the defendant "did not allow her money," the attention of the court is invited to plaintiff's statements by letter and in person to her friend, Miss Wright (Rec., p. 35). "*She wrote me another letter, which I have destroyed, and said she was coming back, but would not come back except to get some things in the house. When she came back (November 11, 1899) she said she had come to get all the money out of him she could and she meant to get a divorce.*" This is plainly evident from the fact that after returning on November 11, 1899, and prior to her leaving on September 25, 1900, she deposited at regular intervals (her husband was paid

at regular intervals) sums of money in the Washington Loan and Trust Company, as indicated by the statement of her account furnished by Mr. Andrew Parker, but which was omitted from this record. Also, as shown by the testimony of their grocer, which has also been omitted, Mrs. Wertz got what she wanted on their book account at his store, and from these articles thus secured she evidently made cakes to sell to swell her bank account also, and not for the purpose as testified to by N. J. Martin, which would not be necessary, viz. (Rec., p. 24) : "*In the spring of 1900, I bought cake of Mrs. Wertz (made from articles charged to her husband), in order that she might have some money. She told me her husband didn't furnish her money, and was not willing to furnish her with such things as she needed to eat.*"

Mrs. Richardson further says (Rec., p. 15), that the doctor, "*who called once or twice, \* \* \* rather intimated that there must be worry on her mind that she did not get better. Mrs. Wertz was confined to her bed for about two weeks, and the third week she should not have been out of bed.*"

Notwithstanding Mrs. Richardson's statement that Mrs. Wertz was confined to her bed for two weeks, Mr. Wolfe testifies (Rec., p. 19) that she (Mrs. Wertz) was "*in the parlor*" when the doctor came, and he also testified (Rec., p. 18) that the doctor called within "*a week or ten days*" after July 23, 1899. This same witness finds Mrs. Wertz in the parlor as early as 8 o'clock A.M., on August 10, 1899 (Rec., p. 19).

Mrs. Richardson further says (Rec., p. 50), "*Mrs. Wertz was a very sick woman, but in the evening when I left she seemed quite bright and her pulse was very much stronger than it had been, but in the morning when I went in to take her breakfast she looked as though she were about*

*ready for her coffin."* this seems to be a reversal of the general rule with sick people, who are brightest in the morning and the reverse in the evening.

On the 8th of August, 1899, she was able to take a car ride to Chevy Chase (see Rec., p. 25), testimony of Nellie Jordan.

Miss Grace Muirhead testified (Rec., p. 26) that "*she was present when Dr. Middleton called to see Mrs. Wertz in July, 1899. Mrs. Wertz was lying on a couch in the parlor.*"

Mr. Ebenezer Ellis testified (Rec., p. 32): "*I was there one evening when she was sick. He (Wolfe) was standing near her. She was lying on a couch in the parlor, and he (Wolfe) was fanning her with a more tender regard than I thought ought to be under the circumstances. Mr. Wertz was not there.*" Cross-examination: "*This was in 1899, just before the month of August, about half past seven in the evening.*"

Miss Emma J. Wright testified (Rec., p. 34) that "*while she was sick in 1899 she had a little colored girl who, with Mr. Wolfe, attended her quite a good deal; I did all I could for her; sometimes fixed her meals for her. I do not know what was the matter with her; think she was nervous and hysterical; do not think she was in bed all day at any time when she was sick; she did not get up until afternoon, and would lie on the couch in the parlor. Mr. Wolfe attended her morning and evening, and very often came home at noon*" (Rec., p. 35). "*He usually went up in her room and sat on her bed during her illness*" (Rec., p. 37). Miss Wright further said that "*He (Mr. Wertz) told his wife he would attend to her wants.*"

So that instead of not receiving attention when she was complaining, the record shows that her dear friend and most important witness, Mrs. Richardson, was con-

stant in her attendance, and herself prescribed, having some skill in medicine, and gave her (Rec., p. 17) "*pulsatilla, macrotys, and wines were prescribed by me, but I am no physician. I understand the use of family medicines.*" Nellie Jordan, Mrs. Richardson's niece, living next door, brought her meals, the husband being at work. That Dr. Middleton called twice, presumably considering that was sufficient; *en passant*, he has not been called by the complainant. She had the constant and devoted attentions of Mr. Wolfe. That Miss Wright, who called her "*darling Nora,*" was constantly present. But as a complete answer to the charge of neglect while ill, attention is called to the testimony of Abbie B. Mickle (Rec., p. 26), as follows: "*Have known Mr. and Mrs. Wertz since 1893. Mrs. Wertz was sick in June or July, 1894; I attended her. She had a physician, Mrs. Dr. Richards, who called twice a day. Mr Wertz was very kind and attentive towards his wife, and wanted to do everything he could do for her.*" So it appears that in 1894 she was tenderly cared for by the husband, by both physician and nurse. That was because she presumably needed care. The only other time the record shows she was complaining after that was when Wolfe was in the house, and her husband was exercising his natural restraint about her conduct with him to protect her reputation and his own, and it is a fair inference, from the evidence, and in the absence of medical proof to the contrary, that after her return from Ohio, November 11, 1899, and up to September 25, 1900, she was simulating illness, and suffering from hysteria, caused by anger towards her husband in expelling from his house her over-attentive admirer. She may have been nervously over-excited after her return in seeking evidence, and the manufacture thereof, in order

to get the divorce that she told Miss Wright and Mrs. Fryer she was going to obtain.

It seems clear that this alleged cruelty is disposed of.

*OTHER ALLEGED ACTS OF CRUELTY IN  
MORTIFYING PLAINTIFF BY TAKING  
LIBERTIES WITH HER IN PUBLIC.*

The answer to this is that such acts are not charged in the bill, and hence cannot be considered, but since in proof it is suggested that they are testified to by four persons, viz :

- 1st, her mother ;
- 2d, her brother ;
- 3d, Mr. Wolfe ;
- 4th, Zenobia Richardson.

All these are her violent partisans and relatives.

The only witness who ventured to say who was present when these vulgar actions took place is the brother, Karl Beckley, and when he named a third party, Mrs. Kate Lothrop (Rec., p. 22), she was called by the defendant and positively denied the statement (see testimony of Kate Lothrop, Rec., p. 27), but since not alleged in the bill they cannot be considered.

*ALLEGED CRUELTY AS PROVEN BY THE  
WIFE'S DECLARATIONS AND COM-  
PLAINTS.*

Nobody save Mrs. Beckley, the mother ; Karl Beckley, the brother ; Lizzie Parker, the negress, and Zenobia Richardson, the partisan, testify directly to acts of so-called cruelty ; the rest of the plaintiff's case is based on her own declarations and complaints, none of which were

made near enough to the time of the occurrence to justify their admission as of the *res gestæ*, and the authorities cited by the appellant are where they were recent enough to be considered a part of the occurrence.

It is very clear if the rules of evidence are relaxed in this respect in cases of a divorce that all that would be necessary for a wife would be to time and again industriously go to the neighbors and complain of cruelty, and then file her bill and prove her case by this hearsay. This is precisely what she endeavored to do in this case.

None of these declarations of the wife were made *recenti facto*.

A. Mrs. Zenobia Richardson says (Rec., p. 15), "*afterwards, the next morning, Mrs. Wertz told me, &c.,*" and further on (Rec., p. 16) she says, "*Mrs. Wertz came into my house and said that during the day*" her husband had done, &c.

"On **night** of 21st of March, Mrs. Wertz came to my house \* \* \* and said that in the **morning** her husband had become angry, &c."

B. The deposition of Mrs. Beckley, plaintiff's mother, refers to things that occurred in Washington months before. (Rec., p. 12.)

C. Lizzie Parker (Rec., p. 13) says she found Mrs. Wertz in bed with bruises, and she told her "*her husband had knocked her down.*" No time is fixed in this, and the burden was on the plaintiff to show this *recenti facto*; not having done so, it is inadmissible.

D. Mrs. N. J. Martin (Rec., p. 23) testifies as to Mrs. Wertz's declarations about things happening days and weeks before.

While it is true that it is impossible to lay down a gen-

eral rule fixing in minutes the limit of time within which declarations are to be considered admissible as part of the *res gestæ*, it is equally true that no decision can be quoted showing the declarations in this case to be so admissible. They do not come within the principle laid down by the Supreme Court of the United States in the case of *Travellers Ins. Co. v. Mosley*, 75 U. S. 397, which discusses the doctrine of *res gestæ*.

The case of *Snowden v. U. S.*, 2 Appeals D. C. 89, cited by appellant, was one of rape, and the complaint was made within a few hours. The rule is modified in criminal cases.

*PLAINTIFF DOES NOT BELIEVE IN THE  
TRUTH OF HER OWN CHARGES.*

The plaintiff did not testify herself, and was not called to testify before the Examiner. It seems singular that it so happened. It is presumed, it was thought, that all she knew had been told to her neighbors and friends, and that this hearsay was sufficient; but one significant fact appears in the narrative, to wit: Her own written declaration as to why she left her husband. She had consulted her counsel certainly before August 5, 1900, because Mr. Thomas, her attorney, had written to Wolfe before that date to come in and see him, which he did, about the case. On the 24th of September, 1900, she swears to the bill (Rec., p. 5) which was filed on September 26, 1900. On the 25th of September, 1900, when her husband returns from his office, he finds her gone, and with her two wagon-loads of household effects, and the following note, which Miss Wright identifies as in the handwriting of Mrs. Wertz, and which is uncontradicted, is left behind (Rec., p. 41): "*I could never stay where I had once been suspected. Hope God will forgive you for*

*the great wrong you have done me.*" If she left her husband because of his cruelty, and because that cruelty had endangered her health and life, would it not have been most natural for her to have so stated? She leaves behind, in her own handwriting, her own justification. "*I can never live where I have once been suspected;*" not, you have treated me cruelly and I leave you, but you suspect me, and hence I leave you. Of what was she suspected? Is it not clear from the record that she referred to her relations with Wolfe? Of what else was she suspected? He had been driven from the home. Their clandestine meetings had been reported to the husband; it was hazardous to continue to meet at the home of the very complaisant Mrs. Zenobia Richardson; it was dangerous to meet elsewhere, because the eyes of the husband were now wide open; the lawyer had prepared the bill; she had affirmed it, and she deliberately left behind her only defence for her action.

She does not write you struck, beat, harassed and neglected or slandered me, but you *suspect* me, and I leave you.

And in the pious wish, "*Hope God will forgive you for the great wrong (not wrongs) you have done me,*" she refers to this suspicion.

As indicated by the testimony, a very warm and tender feeling existed between Mrs. Wertz and Mr. Wolfe at the time she went to Ohio, August 15, 1899, and when she was advised while in Ohio (prior to her husband's going to Ohio to meet her) of Mr. Wertz's action in asking Mr. Wolfe to leave, it evidently angered her, and she then and there, before returning to Washington on November 11, 1899, made up her mind to rid herself of her husband. Note the following testimony of Miss Wright (Rec., p. 35): "*When Mrs. Wertz was away* (from August 15 to



November 11, 1899), *she enclosed a letter to me for Mr. Wolfe. I have destroyed the letter (which accompanied the one for Mr. Wolfe), as she asked me to do so. In another letter to me she said she was coming home, but not to tell her husband (who intended to leave for Ohio about that time). Mr. Wolfe was at the house at that time.*"

The carrying out of her original intention is further illustrated by the fact that she carried off "*two wagon-loads of furniture and household appliances*" (Rec., p. 6) with her; sufficient to engage in light housekeeping.

It was evidently Mrs. Wertz's intention to treat her husband in an unwifely manner to induce him to desert her; failing in this, she commenced to build up a flimsy case. Ida J. Fryer (Rec., p. 28) says, "*I know Mrs. Wertz was seeking evidence for divorce, but, of course, I had nothing to do with the case, only to listen to what she told me.*" On cross-examination she said: "*I did not know anything about the case except what I heard. She was making complaint to me. She told me she was thinking of getting a divorce, or should have one.*" The original record will show that this conversation occurred shortly after Mrs. Wertz's return from Ohio, November 11, 1899. In addition to the above, Thos. M. Riffel (Rec., p. 25) says: "*In July or August, 1900, Mr. Wertz came to my house and asked me to use my influence with his wife to induce her to live with him, as he understood she was about to leave him.*"

### *THE DEFENDANT'S PROOF AS TO KIND TREATMENT.*

The defendant introduced a number of witnesses who were intimate friends to prove his uniform kindness towards her.

1. *J. S. Jordan* (Rec., p. 27). "*I am the father of Mrs.*

*Richardson, who has testified in this case; lived next door; \* \* \* have frequently seen them together as neighbors; have never seen anything ungentlemanly in his treatment."*

2. *Zua M. Unger (Rec., p. 28). "Have known the parties to this suit about five or six years; have seen them about once a month usually. Defendant's treatment of his wife was kind, so far as I know."*

3. *Ida J. Fryer (Rec., p. 28). "I was a neighbor of theirs for about two years, something like three or four years ago. I saw them together frequently when I lived next door (1212 O street) to them. I never heard Mr. Wertz speak a cross word to his wife."*

4. *John W. Palmer (Rec., p. 28). "From July 1, 1892, to September 30, 1894, I rented a house, No. 922 N street, and Mr. and Mrs. Wertz resided with me. I saw them most every evening. In my opinion I never saw a man treat a wife any better than he did. She was sick there at one time about five or six weeks. Miss Godfrey was with her during her illness."*

5. *Frank E. Elder (Rec., pp. 30 and 31). "Have known the parties to this suit since November, 1897; was at their house three or four times a week. Mr. Wertz always treated his wife very kindly; was very affectionate and very considerate of her welfare and feelings. I never saw anything that I would consider indecent or cruel. I know Mr. Wolfe. When I first met him there I did not notice anything wrong, but later on I would have thought that he was her husband if I had not known which was, from the way she treated him. She always sided with him. \* \* \* I have seen her (Mrs. Wertz), just from a little argument fly up and get mad at her husband, shake her fist in his face, and tell him (Mr. Wertz) he knew he was lying. \* \* \* Finally, she made the assertion that the worst woman living was too good for the best man. Mr.*

Wertz told her she knew that was not so. Then she said, 'Now, Mell, you know that is a lie.'"

6. Josephine Stuchell (Rec., p. 31). "I lived at 920 N Street part of the time between March, 1894, and 1896; Mr. and Mrs. Wertz were living there at that time. I know nothing but what was good of both of them. I thought he was the best husband I ever saw."

7. Owen P. Kellar (Rec., p. 32). "Have known the parties to this suit about eight or ten years. Myself and wife have been at their house and they have been at ours. I always saw him treat her well; never anything else."

8. Ebenezer Ellis (Rec., p. 32). "I knew Mr. Wertz before he was married. \* \* \* I saw them quite frequently at church and at their home. His treatment of her, as I saw it, was very kind. I know Mr. Wolfe. I saw a very tender regard on the part of Mr. Wolfe, but do not know that you could call it fondness. I was there one evening when she was sick. He (Wolfe) was standing near her. She was lying on the couch in the parlor, and he was fanning her with more tender regard than I thought ought to be under the circumstances. Mr. Wertz was not there."

9. W. F. Basim (Rec., p. 33): "Have known the parties about 10 years. Up until some two years ago, my wife and I used to visit them frequently. Since then we have not seen much of them. All that I ever saw of Mr. Wertz's treatment of his wife was kind."

10. Abbie B. Mickle (Rec., p. 26): "Have known Mr. and Mrs. Wertz since 1893. Mrs. Wertz was sick in June or July, 1894; I attended her. She had a physician, Mrs. Dr. Richards, who called twice a day. Mr. Wertz was very kind and attentive towards his wife, and wanted to do everything he could for her."

11. Emma J. Wright (Rec., p. 34): "Have known the parties to this suit seven years; \* \* \* have lived in

*the house with Mr. and Mrs. Wertz six years and a half;  
 \* \* \* lived with them as one of the family. Mr. Wertz  
 was kind, generous, and affectionate towards his wife.  
 \* \* \* Never saw Mr. Wertz act indecently towards his  
 wife."*

## II.

### *THE APPEAL SHOULD BE DISMISSED BE- CAUSE THERE IS NOT HERE A PROPER RECORD.*

It appears what is here in the pseudo record (p. 60) that the clerk of the Supreme Court of the District of Columbia was directed by Mr. Thomas, attorney for the appellant, to prepare the transcript of record on appeal in this suit, and include therein the following :

1. Petition for divorce.
2. Answer of the defendant.
3. Order striking out certain portions of defendant's answer.
4. Decree dismissing bill.
5. The testimony in the cause in narrative form as per exhibit.
6. Memorandum of note of appeal and order for citation.
7. Memorandum of issues and acceptance of citation.
8. Memorandum of approval in filing of appeal bond.
9. *Præcipe*.

And that service of the above *præcipe* was acknowledged on the 5th of December, 1901, by Mr. Lipscomb, the solicitor for the defendant.

It appears from this that Mr. Thomas, as attorney for the appellant, had the testimony in the case prepared by himself and reduced into what he chooses to term

“narrative form *per exhibit*,” but it does not appear that any exhibit was filed until after the decree of the court below. Therefore, by the record—the only alleged transcript of the record that is before this court in so far as the testimony is concerned, which is the very case itself—is a narrative of that testimony filed by Mr. Thomas, the attorney.

Under the rules of this court, as understood by appellee, Rule No. 5g says, in effect, this : “*That to reduce the cost of appeal if the appellant shall be of opinion that other parts of the **record** are unnecessary, the counsel may by notice or order in writing, designate the parts of the **record** which he desires to be included in the transcript as sufficient for the determination of said question, and the said clerk shall thereupon transcribe and certify as the record in the cause necessary for the hearing of the appeal the parts so designated.*”

No such motion or notice was ever served on the counsel for the appellee. The record says that a notice was served by the counsel of the appellant desiring the clerk to print (No. 5) the testimony in the cause “*in narrative form as per exhibit.*” The testimony “*in narrative form*” was not a part of the record, and could not be made such by act of the counsel. The record was the testimony as it was taken *verbatim* and read to the chancellor who made the decree, and it is submitted that a digest, analysis, or narrative of that testimony, made by the counsel for the appellant and by him filed in the cause, was not a part of the record, and could not possibly become such any more than his brief of law should be considered a part of the record. And so the appellee is not estopped in objecting to this as being the record, because notice was served on him that a narrative of the record was filed.

When the case got up to this court a motion was made

to require the appellee to pay the costs of the printing and counsel fees, which the court denied, and a motion was made by the appellee suggesting a diminution of the record on the ground that the record did not set forth the testimony or any designated part thereof, nor extracts from the testimony, but a statement in narrative form made by the counsel for appellant as to some portions of the testimony, omitting many and various portions of vital importance to the consideration of the cause in this court, and a *certiorari* was issued by this court to the clerk below to bring up the whole record; and appellee was ordered to pay the cost of bringing up the entire record, which he did not do. So the case stands here in this position.

It is suggested to the court that the appeal simply claiming as error of matters of fact, that the court below should have granted the divorce, that it is eminently proper to reverse the judgment of the chancellor who had before him the entire testimony, that all the testimony that he had before him should be before this court before this court can properly say he was wrong, but it is not here by virtue of any neglect of the appellee. It is clearly necessary for the appellate court to review the judgment of the court below on questions of fact, that all questions of fact before the chancellor below ought to be before the appellate court, and they are not here by virtue of the fact that the appellant puts them in a record mutilated form, showing on its face that it is practically a brief made by the counsel for the appellant.

The appellee, therefore, asks that this appeal be dismissed for failure to have before this court a proper transcript of record, or an appeal properly here under the rules of this court; and in support thereof cites the case of *Davis v. Harper*, 14 Court of Appeals D. C. 298, in which it was decided that "*a certificate of the clerk of the*

*lower court, attached to an alleged transcript to the effect that 'the foregoing pages, numbered from 1 to 36, inclusive, are true copies of the original in cause No. 18,694, in equity, wherein George E. Davis is the complainant and Marian Hurper et al. are the defendants, as the same remain upon the files and records of said court,' is defective and insufficient, as it does not certify that the transcript is, in fact, a transcript of the record in the cause."*

So it is asserted by the appellee that the certificate of the clerk of the lower court, filed in this court, saying "*the testimony in the cause in narrative form as per exhibit*" is defective and insufficient, as it does not certify that the transcript is in fact either a record or a part of the record, but simply pretends to be the testimony in the cause in narrative form as per exhibit. It does not say that the exhibit was filed in the cause, or who ordered the exhibit, nor that the exhibit is part of the record, and it simply is what it purports to be—the testimony in the case in narrative form.

Does the filing by an attorney of his narrative of the testimony in a case, or his brief of law or of facts in the cause, make that document a part of the record, which will justify the clerk on notice from said attorney to send it up as the record or a part of the record? The appellee contends that it does not, and that the neglect of the counsel on the other side cannot make it a part of the record; that the record in a cause cannot be padded for the purposes of appeal by either counsel filing ponderous briefs, statements, documents or exhibits, and asking, after they are filed, to make them a part of the record.

See *Florida Central R.R. Co. v. Schulte*, 100 U. S. 644.

It is therefore suggested that the appeal be dismissed on the ground, first, that the chancellor below was justi-

fied on the proofs in dismissing the bill, and, second, that this court should dismiss the appeal under its own rules for failure to have a proper transcript.

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